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HOUSE OF REPRESENTATIVES

REPORT
No. 97-765

COMPLETED

COMMUNICATIONS AMENDMENTS ACT OF 1982

AUGUST 19, 1982.—Ordered to be printed

Mr. DINGELL, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 3239]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3239) to amend the Communications Act of 1934 to authorize appropriations for the administration of such Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

TITLE I—COMMUNICATIONS AMENDMENTS

SHORT TITLE

SECTION 101. This title may be cited as the "Communications Amendments Act of 1982".

FINANCIAL INTERESTS OF MEMBERS AND EMPLOYEES OF FEDERAL COMMUNICATIONS COMMISSION

SEC. 102. Section 4(b) of the Communications Act of 1934 (47 U.S.C. 154(b)) is amended to read as follows:

"(b)(1) Each member of the Commission shall be a citizen of the United States.

"(2)(A) No member of the Commission or person employed by the Commission shall—

"(i) be financially interested in any company or other entity engaged in the manufacture or sale of telecommunications equipment which is subject to regulation by the Commission;

"(ii) be financially interested in any company or other entity engaged in the business of communication by wire or radio or in the use of the electromagnetic spectrum;

"(iii) be financially interested in any company or other entity which controls any company or other entity specified in clause (i) or clause (ii), or which derives a significant portion of its total income from ownership of stocks, bonds, or other securities of any such company or other entity; or

"(iv) be employed by, hold any official relation to, or own any stocks, bonds, or other securities of, any person significantly regulated by the Commission under this Act;

except that the prohibitions established in this subparagraph shall apply only to financial interests in any company or other entity which has a significant interest in communications, manufacturing, or sales activities which are subject to regulation by the Commission.

"(B)(i) The Commission shall have authority to waive, from time to time, the application of the prohibitions established in subparagraph (A) to persons employed by the Commission if the Commission determines that the financial interests of a person which are involved in a particular case are minimal, except that such waiver authority shall be subject to the provisions of section 208 of title 18, United States Code. The waiver authority established in this subparagraph shall not apply with respect to members of the Commission.

"(ii) In any case in which the Commission exercises the waiver authority established in this subparagraph, the Commission shall publish notice of such action in the Federal Register and shall furnish notice of such action to the appropriate committees of each House of the Congress. Each such notice shall include information regarding the identity of the person receiving the waiver, the position held by such person, and the nature of the financial interests which are the subject of the waiver.

"(3) The Commission, in determining whether a company or other entity has a significant interest in communications, manufacturing, or sales activities which are subject to regulation by the Commission, shall consider (without excluding other relevant factors)—

"(A) the revenues, investments, profits, and managerial efforts directed to the related communications, manufacturing, or sales activities of the company or other entity involved, as compared to the other aspects of the business of such company or other entity;

"(B) the extent to which the Commission regulates and oversees the activities of such company or other entity;

"(C) the degree to which the economic interests of such company or other entity may be affected by any action of the Commission; and

"(D) the perceptions held by the public regarding the business activities of such company or other entity.

"(4) Members of the Commission shall not engage in any other business, vocation, profession, or employment while serving as such members.

"(5) The maximum number of commissioners who may be members of the same political party shall be a number equal to the least number of commissioners which constitutes a majority of the full membership of the Commission.".

APPOINTMENT, TERMS OF OFFICE, SALARY, AND COMPENSATION OF MEMBERS OF COMMISSION

SEC. 103. (a) Section 4(c) of the Communications Act of 1934 (47 U.S.C. 154(c)) is amended—

(1) by striking out "The";

(2) by striking out "first appointed" and all that follows through "but their successors"; and

(3) by striking out "qualified" and inserting in lieu thereof "been confirmed and taken the oath of office".

(b) Section 4(d) of the Communications Act of 1934 (47 U.S.C. 154(d)) is amended to read as follows:

"(d) Each Commissioner shall receive an annual salary at the annual rate payable from time to time for level IV of the Executive Schedule, payable in monthly installments. The Chairman of the Commission, during the period of his service as Chairman, shall receive an annual salary at the annual rate payable from time to time for level III of the Executive Schedule.".

(c) Section 4(f)(2) of the Communications Act of 1934 (47 U.S.C. 154(f)(2)) is amended by striking out "a legal assistant, an engineering assistant," and inserting in lieu thereof "three professional assistants".

(d) Section 4(g) of the Communications Act of 1934 (47 U.S.C. 154(g)) is amended by inserting "(1)" after the subsection designation, and by adding at the end thereof the following new paragraph:

"(2)(A) If—

"(i) the necessary expenses specified in the last sentence of paragraph (1) have been incurred for the purpose of enabling commissioners or employees of the Commission to attend and participate in any convention, conference, or meeting;

"(ii) such attendance and participation are in furtherance of the functions of the Commission; and

"(iii) such attendance and participation are requested by the person sponsoring such convention, conference, or meeting;

then the Commission shall have authority to accept direct reimbursement from such sponsor for such necessary expenses.

"(B) The total amount of unreimbursed expenditures made by the Commission for travel for any fiscal year, together with the total amount of reimbursements which the Commission accepts under subparagraph (A) for such fiscal year, shall not exceed the level of travel expenses appropriated to the Commission for such fiscal year.

"(C) The Commission shall submit to the appropriate committees of the Congress, and publish in the Federal Register, quarterly reports specifying reimbursements which the Commission has accepted under this paragraph.

"(D) The provisions of this paragraph shall cease to have any force or effect at the end of fiscal year 1985.".

(e) Section 4(k)(2) of the Communications Act of 1934 (47 U.S.C. 154(k)(2)) is amended by striking out ": Provided, That the" and all that follows through "by such reports".

(f) Section 4(k) of the Communications Act of 1934 (47 U.S.C. 154(k)) is amended by redesignating paragraph (4) and paragraph (5) as paragraph (3) and paragraph (4), respectively.

(g) Section 4(k)(4) of the Communications Act of 1934, as so redesignated in subsection (f), is amended by striking out "Bureau of the Budget" and inserting in lieu thereof "Office of Management and Budget".

USE OF AMATEUR VOLUNTEERS FOR CERTAIN PURPOSES

SEC. 104. Section 4(f) of the Communications Act of 1934 (47 U.S.C. 154(f)) is amended by adding at the end thereof the following new paragraph:

"(4)(A) The Commission, for purposes of preparing any examination for an amateur station operator license, may accept and employ the voluntary and uncompensated services of any individual who holds an amateur station operator license of a higher class than the class license for which the examination is being prepared. In the case of examinations for the highest class of amateur station operator license, the Commission may accept and employ such services of any individual who holds such class of license.

"(B) The Commission, for purposes of administering any examination for an amateur station operator license, may accept and employ the voluntary and uncompensated services of any individual who holds an amateur station operator license of a higher class than the class license for which the examination is being conducted. In the case of examinations for the highest class of amateur station operator license, the Commission may accept and employ such services of any individual who holds such class of license. Any person who owns a significant interest in, or is an employee of, any company or other entity which is engaged in the manufacture or distribution of equipment used in connection with amateur radio transmissions, or in the preparation or distribution of any publication used in preparation for obtaining amateur station operator licenses, shall not be eligible to render any service under this subparagraph.

"(C)(i) The Commission, for purposes of monitoring violations of any provision of this Act (and of any regulation prescribed by the Commission under this Act) relating to the amateur radio service, may—

"(I) recruit and train any individual licensed by the Commission to operate an amateur station; and

"(II) accept and employ the voluntary and uncompensated services of such individual.

"(ii) The Commission, for purposes of recruiting and training individuals under clause (i) and for purposes of screening, annotating, and summarizing violation reports referred under clause (i), may accept and employ the voluntary and uncompensated services of any amateur station operator organization.

"(iii) The functions of individuals recruited and trained under this subparagraph shall be limited to—

"(I) the detection of improper amateur radio transmissions;

"(II) the conveyance to Commission personnel of information which is essential to the enforcement of this Act (or regulations prescribed by the Commission under this Act) relating to the amateur radio service; and

"(III) issuing advisory notices, under the general direction of the Commission, to persons who apparently have violated any provision of this Act (or regulations prescribed by the Commission under this Act) relating to the amateur radio service.

Nothing in this clause shall be construed to grant individuals recruited and trained under this subparagraph any authority to issue sanctions to violators or to take any enforcement action other than any action which the Commission may prescribe by rule.

"(D)(i) The Commission, for purposes of monitoring violations of any provision of this Act (and of any regulation prescribed by the Commission under this Act) relating to the citizens band radio service, may—

"(I) recruit and train any citizens band radio operator; and

"(II) accept and employ the voluntary and uncompensated services of such operator.

"(ii) The Commission, for purposes of recruiting and training individuals under clause (i) and for purposes of screening, annotating, and summarizing violation reports referred under clause (i), may accept and employ the voluntary and uncompensated services of any citizens band radio operator organization. The Commission, in accepting and employing services of individuals under this subparagraph, shall seek to achieve a broad representation of individuals and organizations interested in citizens band radio operation.

"(iii) The functions of individuals recruited and trained under this subparagraph shall be limited to—

"(I) the detection of improper citizens band radio transmissions;

"(II) the conveyance to Commission personnel of information which is essential to the enforcement of this Act (or regulations prescribed by the Commission under this Act) relating to the citizens band radio service; and

"(III) issuing advisory notices, under the general direction of the Commission, to persons who apparently have violated any provision of this Act (or regulations prescribed by the Commission under this Act) relating to the citizens band radio service.

Nothing in this clause shall be construed to grant individuals recruited and trained under this subparagraph any authority to issue sanctions to violators or to take any enforcement action other than any action which the Commission may prescribe by rule.

"(E) The authority of the Commission established in this paragraph shall not be subject to or affected by the provisions of part III of title 5, United States Code, or section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

"(F) Any person who provides services under this paragraph shall not be considered, by reason of having provided such services, a Federal employee.

"(G) The Commission, in accepting and employing services of individuals under subparagraphs (A), (B), and (C), shall seek to achieve a broad representation of individuals and organizations interested in amateur station operation.

"(H) The Commission may establish rules of conduct and other regulations governing the service of individuals under this paragraph.".

ORGANIZATION AND FUNCTIONING OF COMMISSION

SEC. 105. (a) Section 5(b) of the Communications Act of 1934 (47 U.S.C. 155(b)) is amended—

(1) by striking out "Within" and all that follows through "and from" and inserting in lieu thereof "From"; and

(2) by striking out "thereafter".

(b) Section 5 of the Communications Act of 1934 (47 U.S.C. 155) is amended by redesignating subsection (d) and subsection (e) as subsection (c) and subsection (d), respectively.

(c) The first sentence of section 5(c)(1) of the Communications Act of 1934, as so redesignated in subsection (b), is amended by striking out "three" and inserting in lieu thereof "two".

REGULATION OF POLE ATTACHMENTS

SEC. 106. Section 224 of the Communications Act of 1934 (47 U.S.C. 224) is amended by striking out subsection (e) thereof.

JURISDICTION OF COMMISSION

SEC. 107. Section 301 of the Communications Act of 1934 (47 U.S.C. 301) is amended—

(1) by striking out "interstate and foreign";

(2) by inserting "State," after "any" the third place it appears therein;

(3) by inserting a comma after "Territory" the first place it appears therein; and

(4) by inserting "State," after "same".

INTERFERENCE WITH ELECTRONIC EQUIPMENT

SEC. 108. (a)(1) The first sentence of section 302(a) of the Communications Act of 1934 (47 U.S.C. 302(a)) is amended by inserting "(1)" after "regulations", and by inserting before the period at the end thereof the following: "; and (2) establishing minimum performance standards for home electronic equipment and systems to reduce their susceptibility to interference from radio frequency energy".

(2) The last sentence of section 302(a) of the Communications Act of 1934 (47 U.S.C. 302(a)) is amended by striking out "shipment, or use of such devices" and inserting in lieu thereof "or shipment of such devices and home electronic equipment and systems, and to the use of such devices".

(3) Section 302(b) of the Communications Act of 1934 (47 U.S.C. 302(b)) is amended by striking out "ship, or use devices" and inserting in lieu thereof "or ship devices or home electronic equipment and systems, or use devices,".

(4) Section 302(c) of the Communications Act of 1934 (47 U.S.C. 302(c)) is amended—

(A) in the first sentence thereof, by inserting "or home electronic equipment and systems" after "devices" each place it appears therein; and

(B) in the last sentence thereof, by inserting "and home electronic equipment and systems" after "Devices", by striking out "common objective" and inserting in lieu thereof "objectives", and by inserting "and to home electronic equipment and systems" after "reception".

(b) Any minimum performance standard established by the Federal Communications Commission under section 302(a)(2) of the Communications Act of 1934, as added by the amendment made in subsection (a)(1), shall not apply to any home electronic equipment or systems manufactured before the date of the enactment of this Act.

QUALIFICATIONS OF STATION OPERATORS

SEC. 109. Section 303(l)(1) of the Communications Act of 1934 (47 U.S.C. 303(l)(1)) is amended—

(1) by striking out "such citizens" and all that follows through "qualified" and inserting in lieu thereof "persons who are found to be qualified by the Commission and who otherwise are legally eligible for employment in the United States"; and

(2) by striking out "in issuing licenses" and all that follows through the end thereof and inserting in lieu thereof the following: "such requirement relating to eligibility for employment in the United States shall not apply in the case of licenses issued by the Commission to (A) persons holding United States pilot certificates; or (B) persons holding foreign aircraft pilot certificates which are valid in the United States, if the foreign government involved has entered into a reciprocal agreement under which such foreign government does not impose any similar requirement relating to eligibility for employment upon citizens of the United States;".

GROUNDS FOR SUSPENSION OF LICENSES

SEC. 110. Section 303(m)(1)(A) of the Communications Act of 1934 (47 U.S.C. 303(m)(1)(A)) is amended by inserting ", or caused, aided, or abetted the violation of," after "violated".

LICENSING OF CERTAIN AIRCRAFT RADIO STATIONS AND OPERATORS

SEC. 111. (a) Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is amended by adding at the end thereof the following new paragraph:

"(t) Notwithstanding the provisions of section 301(e), have authority, in any case in which an aircraft registered in the United States is operated (pursuant to a lease, charter, or similar arrangement) by an aircraft operator who is subject to regulation by the government of a foreign nation, to enter into an agreement with such government under which the Commission shall recognize and accept any radio station licenses and radio operator licenses issued by such government with respect to such aircraft.".

(b) Section 301(e) of the Communications Act of 1934 (47 U.S.C. 301(e)) is amended by inserting "(except as provided in section 303(t))" after "United States".

REVISION OF LICENSE TERMS

SEC. 112. (a) Section 307 of the Communications Act of 1934 (47 U.S.C. 307) is amended by striking out subsection (c), and by redesignating subsection (d) and subsection (e) as subsection (c) and subsection (d), respectively.

(b) Section 307(c) of the Communications Act of 1934, as so redesignated in subsection (a), is amended—

(1) by striking out "five years" the second place and the last place it appears therein and inserting in lieu thereof "ten years"; and

(2) by inserting after the second sentence thereof the following new sentence: "The term of any license for the operation of any auxiliary broadcast station or equipment which can be used only in conjunction with a primary radio, television, or translator station shall be concurrent with the term of the license for such primary radio, television, or translator station.".

AUTHORITY TO OPERATE CERTAIN RADIO STATIONS WITHOUT INDIVIDUAL LICENSES

SEC. 113. (a) Section 307 of the Communications Act of 1934, as amended in section 112(a), is further amended by adding at the end thereof the following new subsection:

"(e)(1) Notwithstanding any licensing requirement established in this Act, the Commission may by rule authorize the operation of radio stations without individual licenses in the radio control service and the citizens band radio service if the Commission determines that such authorization serves the public interest, convenience, and necessity.

"(2) Any radio station operator who is authorized by the Commission under paragraph (1) to operate without an individual license shall comply with all other provisions of this Act and with rules prescribed by the Commission under this Act.

"(3) For purposes of this subsection, the terms 'radio control service' and 'citizens band radio service' shall have the meanings given them by the Commission by rule.".

(b) Section 303(n) of the Communications Act of 1934 (47 U.S.C. 303(n)) is amended by inserting after "any Act" the first place it appears therein the following: ", or which the Commission by rule has authorized to operate without a license under section 307(e)(1),".

AUTHORIZATION OF TEMPORARY OPERATIONS

SEC. 114. Section 309(f) of the Communications Act of 1934 (47 U.S.C. 309(f)) is amended—

(1) by striking out "emergency" each place it appears therein and inserting in lieu thereof "temporary";

(2) by striking out "one additional period" and inserting in lieu thereof "additional periods"; and

(3) by striking out "ninety days" and inserting in lieu thereof "180 days".

RANDOM SELECTION SYSTEM FOR CERTAIN LICENSES AND PERMITS

SEC. 115. (a) Section 309(i)(1) of the Communications Act of 1934 (47 U.S.C. 309(i)(1)) is amended—

(1) by striking out "applicant" the first place it appears therein and inserting in lieu thereof "application"; and

(2) by striking out "the qualifications of each such applicant under section 308(b)" and inserting in lieu thereof "that each such application is acceptable for filing".

(b) Section 309(i)(2) of the Communications Act of 1934 (47 U.S.C. 309(i)(2)) is amended to read as follows:

"(2) No license or construction permit shall be granted to an applicant selected pursuant to paragraph (1) unless the Commission determines the qualifications of such applicant pursuant to subsection (a) and section 308(b). When substantial and material questions of fact exist concerning such qualifications, the Commission shall conduct a hearing in order to make such determinations. For the purpose of making such determinations, the Commission may, by rule, and notwithstanding any other provision of law—

"(A) adopt procedures for the submission of all or part of the evidence in written form;

"(B) delegate the function of presiding at the taking of written evidence to Commission employees other than administrative law judges; and

"(C) omit the determination required by subsection (a) with respect to any application other than the one selected pursuant to paragraph (1).".

(c)(1) Section 309(i)(3)(A) of the Communications Act of 1934 (47 U.S.C. 309(i)(3)(A)) is amended by striking out ", groups" the first place it appears therein, and all that follows through the end thereof, and inserting in lieu thereof the following: "used for granting licenses or construction permits for any media of mass communications, significant preferences will be granted to applicants or groups of applicants, the grant to which of the license or permit would increase the diversification of ownership of the media of mass communications. To further diversify the ownership of the media of mass communications, an additional significant preference shall be granted to any applicant controlled by a member or members of a minority group.".

(2) Section 309(i)(3) of the Communications Act of 1934 (47 U.S.C. 309(i)(3)) is amended by adding at the end thereof the following new subparagraph:

"(C) For purposes of this paragraph:

"(i) The term 'media of mass communications' includes television, radio, cable television, multipoint distribution service, direct broadcast satellite service, and other services, the licensed facilities of which may be substantially devoted toward providing programming or other information services within the editorial control of the licensee.

"(ii) The term 'minority group' includes Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders.".

(d) Section 309(i)(4)(A) of the Communications Act of 1934 (47 U.S.C. 309(i)(4)(A)) is amended by striking out "effective date of this subsection" and inserting in lieu thereof "date of the enactment of the Communications Technical Amendments Act of 1982".

AGREEMENTS RELATING TO WITHDRAWAL OF CERTAIN APPLICATIONS

SEC. 116. (a) Section 311(c)(3) of the Communications Act of 1934 (47 U.S.C. 311(c)(3)) is amended by striking out "the agreement" the second place it appears therein and all that follows through the end thereof and inserting in lieu thereof the following: "(A) the agreement is consistent with the public interest, convenience, or necessity; and (B) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement.".

(b) Section 311(d)(1) of the Communications Act of 1934 (47 U.S.C. 311(d)(1)) is amended by striking out "two or more" and all that follows through "station" and inserting in lieu thereof the following: "an application for the renewal of a license granted for the operation of a broadcasting station and one or more applications for a construction permit relating to such station".

(c) Section 311(d)(3) of the Communications Act of 1934 (47 U.S.C. 311(d)(3)) is amended by striking out "license".

WILLFUL OR REPEATED VIOLATIONS

SEC. 117. Section 312 of the Communications Act of 1934 (47 U.S.C. 312) is amended by adding at the end thereof the following new subsection:

"(f) For purposes of this section:

"(1) The term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

"(2) The term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.".

APPLICABILITY OF CONSTRUCTION PERMIT REQUIREMENTS TO CERTAIN STATIONS

SEC. 118. Section 319(a) of the Communications Act of 1934 (47 U.S.C. 319(a)) is amended by striking out "the construction of which is begun or is continued after this Act takes effect,".

AUTHORITY TO ELIMINATE CERTAIN CONSTRUCTION PERMITS

SEC. 119. Section 319(d) of the Communications Act of 1934 (47 U.S.C. 319(d)) is amended to read as follows:

"(d) A permit for construction shall not be required for Government stations, amateur stations, or mobile stations. A permit for

construction shall not be required for public coast stations, privately owned fixed microwave stations, or stations licensed to common carriers, unless the Commission determines that the public interest, convenience, and necessity would be served by requiring such permits for any such stations. With respect to any broadcasting station, the Commission shall not have any authority to waive the requirement of a permit for construction. With respect to any other station or class of stations, the Commission shall not waive such requirement unless the Commission determines that the public interest, convenience, and necessity would be served by such a waiver.".

PRIVATE LAND MOBILE SERVICES

SEC. 120. (a) Part I of title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) is amended by adding at the end thereof the following new section:

"PRIVATE LAND MOBILE SERVICES

"SEC. 331. (a) In taking actions to manage the spectrum to be made available for use by the private land mobile services, the Commission shall consider, consistent with section 1 of this Act, whether such actions will—

"(1) promote the safety of life and property;

"(2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and marketplace demands;

"(3) encourage competition and provide services to the largest feasible number of users; or

"(4) increase interservice sharing opportunities between private land mobile services and other services.

"(b)(1) The Commission, in coordinating the assignment of frequencies to stations in the private land mobile services and in the fixed services (as defined by the Commission by rule), shall have authority to utilize assistance furnished by advisory coordinating committees consisting of individuals who are not officers or employees of the Federal Government.

"(2) The authority of the Commission established in this subsection shall not be subject to or affected by the provisions of part III of title 5, United States Code, or section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

"(3) Any person who provides assistance to the Commission under this subsection shall not be considered, by reason of having provided such assistance, a Federal employee.

"(4) Any advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of the Federal Advisory Committee Act.

"(c)(1) For purposes of this section, private land mobile service shall include service provided by specialized mobile radio, multiple licensed radio dispatch systems, and all other radio dispatch systems, regardless of whether such service is provided indiscriminately to eligible users on a commercial basis, except that a land station licensed in such service to multiple licensees or otherwise shared by authorized users (other than a nonprofit, cooperative station) shall

not be interconnected with a telephone exchange or interexchange service or facility for any purpose, except to the extent that (A) each user obtains such interconnection directly from a duly authorized carrier; or (B) licensees jointly obtain such interconnection directly from a duly authorized carrier.

"(2) A person engaged in private land mobile service shall not, insofar as such person is so engaged, be deemed a common carrier for any purpose under this Act. A common carrier shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982.

"(3) No State or local government shall have any authority to impose any rate or entry regulation upon any private land mobile service, except that nothing in this subsection may be construed to impair such jurisdiction with respect to common carrier stations in the mobile service.".

(b)(1) Section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended by adding at the end thereof the following new paragraph:

"(gg) 'Private land mobile service' means a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation.".

(2) Section 3(n) of the Communications Act of 1934 (47 U.S.C. 153(n)) is amended to read as follows:

"(h) 'Mobile service' means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes both one-way and two-way radio communication services.".

NOTICES OF APPEAL

SEC. 121. Section 402(d) of the Communications Act of 1934 (47 U.S.C. 402(d)) is amended—

(1) by striking out "Commission" the first place it appears therein and inserting in lieu thereof "appellant";

(2) by striking out "date of service upon it" and inserting in lieu thereof "filing of such notice";

(3) by striking out "and shall thereafter" and all that follows through "Washington"; and

(4) by striking out "Within thirty days after the filing of an appeal, the" and inserting in lieu thereof "The".

COMPUTATION OF CERTAIN FILING DEADLINES

SEC. 122. The last sentence of section 405 of the Communications Act of 1934 (47 U.S.C. 405) is amended by striking out "public notice" and all that follows through the end thereof and inserting in lieu thereof the following: "the Commission gives public notice of the order, decision, report, or action complained of.".

EFFECTIVE DATE OF CERTAIN COMMISSION ORDERS

SEC. 123. Section 408 of the Communications Act of 1934 (47 U.S.C. 408) is amended by striking out "within such reasonable time" and all that follows through the end thereof and inserting in lieu thereof the following: "thirty calendar days from the date upon which public notice of the order is given, unless the Commission designates a different effective date. All such orders shall continue in force for the period of time specified in the order or until the Commission or a court of competent jurisdiction issues a superseding order.".

APPLICATION OF FORFEITURE REQUIREMENTS TO CABLE TELEVISION SYSTEM OPERATORS

SEC. 124. The second sentence of section 503(b)(5) of the Communications Act of 1934 (47 U.S.C. 503(b)(5)) is amended by inserting ", or is a cable television system operator" before the period at the end thereof.

FORFEITURE OF COMMUNICATIONS DEVICES

SEC. 125. Title V of the Communications Act of 1934 (47 U.S.C. 501 et seq.) is amended by adding at the end thereof the following new section:

"FORFEITURE OF COMMUNICATIONS DEVICES

"SEC. 510. (a) Any electronic, electromagnetic, radio frequency, or similar device, or component thereof, used, sent, carried, manufactured, assembled, possessed, offered for sale, sold, or advertised with willful and knowing intent to violate section 301 or 302, or rules prescribed by the Commission under such sections, may be seized and forfeited to the United States.

"(b) Any property subject to forfeiture to the United States under this section may be seized by the Attorney General of the United States upon process issued pursuant to the supplemental rules for certain admiralty and maritime claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made if the seizure is incident to a lawful arrest or search.

"(c) All provisions of law relating to—

"(1) the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws;

"(2) the disposition of such property or the proceeds from the sale thereof;

"(3) the remission or mitigation of such forfeitures; and

"(4) the compromise of claims with respect to such forfeitures;

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section, except that such seizures and forfeitures shall be limited to the communications device, devices, or components thereof.

"(d) Whenever property is forfeited under this section, the Attorney General of the United States may forward it to the Commission or sell any forfeited property which is not harmful to the public.

The proceeds from any such sale shall be deposited in the general fund of the Treasury of the United States.".

EXEMPTION APPLICABLE TO AMATEUR RADIO COMMUNICATIONS

SEC. 126. The last sentence of section 605 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

(1) by striking out "broadcast or";

(2) by striking out "amateurs or others" and inserting in lieu thereof "any station";

(3) by striking out "or" the last place it appears therein;

(4) by inserting ", aircraft, vehicles, or persons" after "ships"; and

(5) by inserting before the period at the end thereof the following: ", or which is transmitted by an amateur radio station operator or by a citizens band radio operator".

TECHNICAL AMENDMENTS

SEC. 127. (a) Section 304 of the Communications Act of 1934 (47 U.S.C. 304) is amended by striking out "ether" and inserting in lieu thereof "electromagnetic spectrum".

(b) Section 402(a) of the Communications Act of 1934 (47 U.S.C. 402(a)) is amended by striking out "Public Law" and all that follows through the end thereof and inserting in lieu thereof "chapter 158 of title 28, United States Code.".

(c)(1) Section 405 of the Communications Act of 1934 (47 U.S.C. 405) is amended by striking out "rehearing" each place it appears therein and inserting in lieu thereof "reconsideration".

(2) The heading for section 405 of the Communications Act of 1934 (47 U.S.C. 405) is amended by striking out "REHEARINGS" and inserting in lieu thereof "RECONSIDERATIONS".

AMENDMENT TO OTHER LAW

SEC. 128. Section 1114 of title 18, United States Code, is amended by inserting after "law enforcement functions," the following: "or any officer or employee of the Federal Communications Commission performing investigative, inspection, or law enforcement functions,".

TITLE II—NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

AUTHORIZATION OF APPROPRIATIONS

SEC. 201. There is authorized to be appropriated for the administration of the National Telecommunications and Information Administration $12,917,000 for fiscal year 1983, and $11,800,000 for fiscal year 1984, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs.

STUDY OF TELECOMMUNICATIONS AND INFORMATION GOALS

SEC. 202. (a) The National Telecommunications and Information Administration shall conduct a comprehensive study of the long-

range international telecommunications and information goals of the United States, the specific international telecommunications and information policies necessary to promote those goals and the strategies that will ensure that the United States achieves them. The Administration shall further conduct a review of the structures, procedures, and mechanisms which are utilized by the United States to develop international telecommunications and information policy.

(b) In any study or review conducted pursuant to this section, the National Telecommunications and Information Administration shall not make public information regarding usage or traffic patterns which would damage United States commercial interests. Any such study or review shall be limited to international telecommunications policies or to domestic telecommunications issues which directly affect such policies.

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the bill and agree to the same.

JOHN D. DINGELL,
TIMOTHY E. WIRTH,
JAMES T. BROYHILL,
Managers on the Part of the House.

BARRY GOLDWATER,
TED STEVENS,
HOWARD W. CANNON,
Managers on the Part of the Senate.

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3239) to amend the Communications Act of 1934 to authorize appropriations for the administration of such Act, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I

SHORT TITLE

House bill

The House bill provided that the bill may be cited as the "Federal Communications Commission Authorization Act of 1981."

Senate amendment

The Senate amendment provided that this title may be cited as the "Communications Amendments Act of 1982."

Conference substitute

The conference substitute adopts the Senate provision.

While the Communications Act of 1934 has been amended several times since its initial passage, it has never received a thorough technical overhaul and clean-up. The Act still contains numerous instances of obsolete language, while imposing regulatory requirements and responsibilities upon the FCC which are no longer necessary in light of advancements in technology and changed circumstances.

While many of the provisions of the Conference Substitute are merely technical revisions of existing law, several provisions permit the FCC to have greater flexibility in reorganizing staff, in carrying out its duties, and in reducing the amount of unnecessary paperwork.

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Most importantly, the bill provides a number of budget saving provisions which will enable the Commission more efficiently and effectively to utilize its manpower and resources at a time of budgetary constraint. For example, section 307 of the Communications Act would be amended by authorizing the Commission to eliminate the individual licensing of citizens band (CB) and radio control services, which would save the Commission at least $400,000 annually. Other provisions such as those relating to reimbursement for travel, awarding licenses by lottery, increasing the terms of certain licenses, and eliminating the need for certain construction permits would also result in significant budgetary and resource savings.

Three major classes of licenses are dealt with in the Conference Substitute. Amateur radio, citizens band (CB) radio, and private land mobile radio. In addition, the issues of radio frequency interference rejection standards and Commission authority to use a system of random selection to grant licenses are addressed in the bill. A descriptive background on each issue follows.

A. Amateur radio service.— The amateur radio sevice is as old as radio itself. Every single one of the early radio pioneers, experimenters, and inventors was an amateur: commercial, military, and government radio was unknown. The zeal and dedication to the service of mankind of those early pioneers has provided the spiritual foundation for amateur radio over the years. The contributions of amateur radio operators to our present day communication techniques, facilities, and emergency communications have been invaluable.

In the early 1920s, amateurs were relegated to the portion of the radio frequency spectrum that was considered at that time to be virtually useless: the short-waves below 200 meters. These short-waves that once were considered useless are now occupied by marine and aviation, police and public safety, television and FM broadcast, international broadcast, and amateur services, to name a few.

Amateurs are pioneering still today. Space or satellite communications are a most important part of amateur radio. Through Program OSCAR (Orbiting Satellite Carrying Amateur Radio), amateurs have been utilizing advanced technology from their relatively simple, inexpensive ground stations. Seven amateur satellites have been built to date by amateurs at their expense. The amateur space activities are playing an important role in attracting the young people of America to scientific fields.

Almost every nation has amateurs who communicate each day with fellow amateurs in other countries and on other continents passing vital emergency message traffic and acting as ambassadors of international goodwill. The modes of communication include Morse code telegraphy, telephone, teletype or teleprinter, television and facsimile. Equipment ranges from home-built transmitters and receivers using parts from discarded radio and television receivers and costing only a few dollars, to the most sophisticated equipment manufactured for commercial, government, and military use costing many hundreds of dollars.

There are approximately 400,000 amateurs in the United States and almost 900,000 throughout the world. At any time of every day, thousands of amateurs scattered throughout the world are lis-

tening to and communicating with fellow amateurs over distances varying from only a few miles within a city to thousands of miles across the world. It is the large number of amateurs dispersed around the world operating in the five high frequency bands that has made it possible to provide the first, and for some time thereafter, the only communication links between areas devastated by natural disasters—earthquakes, tidal waves, hurricanes, tornadoes, blizzards and floods—and the outside world.

Every amateur has earned his license by having demonstrated his knowledge of radio theory and application, International Morse Code, the Communications Act, and the regulations of the Federal Communications Commission. Entry into amateur radio usually is through the Novice Class. Amateurs are encouraged to increase their knowledge and skills by a series of five classes or grades of license, all but one with limited operating privileges.

The Amateur Radio Service has been praised for being self-regulated. The Commission has reported that less time has been devoted to monitoring and regulating the Amateur Service than to any other service because of its self-policing and discipline.

One primary purpose of the Conference Substitute is to provide the Federal Communications Commission with the authority to implement various programs which will result in improvements in administration of the amateur radio service and to cut the cost thereof. It will further allow the amateur radio service to continue its tradition as the most self-regulated radio service in the United States, and to become to some extent self-administered, requiring even less expenditure to government time and effort than in the past.

B. Citizens band radio service.—The citizens band (CB) radio service comprises the largest single class of radio operators in the country. Although the CB fad the nation experienced during the late 1970s may now be over, there are still millions of CB licensees throughout the United States.

Citizens band radio is the primary highway communications system for individuals in the United States. It is the only two-way service available to conduct personal and/or business communications between private citizens, businesses, police and government officials.

Channel 9 on the citizens band has been designated as an Official Emergency Traveler's Assistance Channel. This has been recognized by users and manufacturers alike, resulting in the purchase of CB radios as a highway safety device to be used in family automobiles and other vehicles. The U.S. Coast Guard monitors Channel 9 to hear boating emergencies. Moreover, many fleets of state highway patrol and state and local police vehicles have been equipped with CB radio to assist motorists.

In addition to the special Channel 9 function, CB radio has often been used by individuals and organizations to notify appropriate authorities of emergencies and natural disasters. In many cases, a CB radio operator on the scene has communicated the first news of airplane crashes, floods, earthquakes, tornadoes, and other catastrophes. Moreover, many CB organizations have worked with local law enforcement agencies to establish on-going programs whereby CBers voluntarily perform functions such as motorist assistance,

security patrol observation, area searches for missing persons, escorts for oversized vehicles or parades, disaster duty, or facilitation of rescue missions.

The community service provided by the CB radio service and its many organizations has been recognized on numerous occasions. For example, in 1978, the heads of the three federal government agencies (Department of Transportation, Interstate Commerce Commission, and Federal Communications Commission) signed a federal policy statement on the benefits of CB radio for the promotion of highway safety. The American National Red Cross has officially recognized the effectiveness of CB radio in disaster situations and has agreed to work with CB groups for the purpose of disaster relief. One CB organization in particular, REACT International, received the 1982 President's Volunteer Action Award in recognition of the outstanding public service performance of its volunteer members in monitoring Channel 9 and providing other assistance to promote highway safety.

These public service voluntary efforts by CB operators have been threatened by a small minority of CB users who, either maliciously or in ignorance of FCC rules, transmit regularly non-emergency communications on the Official Emergency and Traveler's Assistance Channel. One key purpose of the Conference Substitute is to permit the FCC to accept the volunteer services of CB operators to monitor the CB frequencies for such rule violations in order to preserve the integrity of the CB service. Moreover, the Conferees are extremely concerned that should the Commission decide to de-license the CB service, the commission continues to ensure that the overall integrity of this service is protected.

C. Private land mobile service.—Licensees in the private land mobile services include public safety, industrial, business and land transportation users which operate their own private one-way and two-way land mobile systems, most often as means of enhancing a firm's ability of providing a multitude of other goods or services to the American public. Private land mobile services play a relatively unknown, but critically important, role in protecting the public welfare and in promoting economic vitality. Because of the existence of private land mobile radio, a large number of business establishments, large and small, are capable of responding quickly to service calls from homeowners and consumers, enabling them to be more efficient and economical.

Police, fire, ambulance, and other emergency services to the public are in large part reliant on the use of private land mobile radio. In addition, private land mobile radio is rapidly becoming an important tool for the survival of the small businessman in the present economy. Additionally, public utilities are able to respond quickly to calls, avoid widespread disruption of utility service to the general public, and promptly restore service during blackouts through use of such radio services. Moreover, manufacturing plants and refineries are able to operate in a more efficient and safe manner; forest crews are able to contain forest fires with less personal danger and with less loss of valuable timber; and, snowplows and other highway equipment can be utilized more effectively and construction activities can be better coordinated. These are only a few of the many important and essential uses of private land

mobile radio affecting public safety and the welfare, as well as the economy.

The Conference Substitute recognizes the critical importance of the private land mobile services and provides statutory support and guidance for existing and future FCC regulation of these services.

D. Radio frequency interference rejection standards.—Radio frequency interference (RFI) arises when a signal radiated by a transmitter is picked up by an electronic device in such a manner that it prevents the clear reception of another and desired signal or causes malfunction of some other electronic device (not simply a radio or television receiver). While almost any transmitter of any service is a potential interference source, Amateur or Citizens Band (CB) stations are very often associated with RFI problems involving electronic devices in the home.

Particularly since the advent of commercial television immediately following World War II, amateur radio operators have been active in interference control and elimination. The amateurs learned very early that the incorporation of good engineering practices in their transmitter construction, such as electrostatic shielding and filtering, minimized the possibility of interference by preventing the radiation of spurious signals. Such practices and techniques are well understood and are universally incorporated in transmitters manufactured and in use today, irrespective of the service. Appropriate rules of the Federal Communications Commission require all transmitters of all services, including the transmitting sections of transceivers, to suppress spurious radiation.

It has become evident that many interference problems involving home electronic equipment and systems are not fully resolvable through taking protective steps with the transmitting equipment, but that resolution of some interference problems may require action with respect to receivers and other electronic devices picking up unwanted signals.

Causes for interference to television reception, for example, can be divided into the following categories. First, although least common, is the pickup of a spurious (unwanted) signal having a frequency within or close to the band of frequencies occupied by the television signal. Such interference usually is caused by an interfering transmitter. In many instances, there is what is termed an harmonic relationship between the transmitter frequency and the television channel. That is particularly the case with the 27 Megahertz CB service: the second and third harmonics (multiples) of the 27 Megahertz CB signal fall in TV Channels 2 and 5, respectively. It is generally recognized that no TV design can eliminate susceptibility to harmonic interference. Second is the overloading of the input circuit of the television receiver by an undesired signal so strong that overloading, i.e. malfunctioning, of the circuits generates spurious signals within the television receiver that interferes with the desired signal. Such interference usually is more severe with transistorized receivers and may result from poor circuit design in the receiver. Third is the pickup of an undesired signal by circuits within the set or wiring leading to the set. Poor shielding or poor circuit design in the receiver is usually the culprit.

Interference to other electronic devices such as record players, hi-fi amplifiers, home burglar alarm and security systems, automatic garage door openers, electronic organs, and public address systems usually arises from the pick-up of a relatively strong signal by the external wiring, such as the wires leading to the speakers or to the power source, followed by the rectification of the signal by a circuit, contact or component within the device.

The cures for most such interference have been well known for many years. Often an inexpensive filter in the lead from the antenna to the television receiver will reduce the interference to an acceptable level or eliminate it entirely. For the other electronic devices, the judicious installation of inexpensive capacitors (devices which prevent wiring from picking up undesired signals) may suffice.

Even though the causes and cures of radio and television interference have been known for many years, the number of complaints received by the Commission has grown steadily each year. With the rapid, and indeed explosive, growth of the 27 MHz CB service in the mid-1970s, the probability of a home electronic device being located near a transmitter of some sort has increased substantially. The public's use of home electronic devices has grown, and continues to grow, at an exponential rate.

Many manufacturers of home electronic equipment and systems have been willing to provide, often free of charge, filters for electronic equipment when a particular interference problem is brought to their attention. However, their efforts to voluntarily address the root problem by incorporating such RFI suppression techniques in the design and assembly-line stage have been less than adequate. This is true even though such filtering mechanisms and anti-interference design may only cost a few cents per unit.

Many believe that the Commission does not now have authority to compel the use of protective devices in equipment which does not emit radio frequency energy sufficient in degree to cause harmful interference to radio communications. Manufacturers and retailers also believe that the Commission cannot require a label on equipment or the supplying of a pamphlet of the possibility of interference and outlining corrective measures. The Commission has thus far acted in consonance with this belief. The Conference Substitute would thus give the FCC the authority to require that home electronic equipment and systems be so designed and constructed as to meet minimum standards for protection against unwanted radio signals and energy. Extensive amateur and Commission experience over the years with interference investigation and elimination supports the conclusion that, in most instances, satisfactory corrective measures can be simple and inexpensive. The Conferees by no means intends for major modifications and redesigns of equipment to be required, or that the Commission require steps to be taken which impose substantial additional costs or unnecessary burdens on equipment manufacturers. We do not believe that elaborate procedures will be necessary in order to achieve the desired result. Existing equipment and that manufactured prior to the date of enactment of this legislation will be exempt from any such standards as might be established by the FCC.

The millions of purchasers of television and radio receivers and other home electronic equipment and systems each year deserve protection from interference. Significant reduction of interference from the multitude of complaints received each year by the Commission should result from enactment of this provision, as should lawsuits against amateur and other radio operators in local jurisdictions based upon interference. Section 7 of the Conference Substitute is viewed by the Conferees as necessary to address adequately this increasing problem, which plagues so many of the nation's consumers. Moreover, by virtue of this section, the Conferees wishes to clarify that the exclusive jurisdiction over RFI incidents (including pre-emption of state and local regulation of such phenomena) lies with the FCC.

E. FCC authority to use a system of random selection.—On August 13, 1981, President Reagan signed into law the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 357 (1981). Section 1242(a) of this Act added a new subsection 309(i) to the Communications Act of 1934 (47 U.S.C. 309(i)) authorizing the FCC to grant licenses on the basis of random selection or lottery. 95 Stat. 736 (1981).

This statute permitted the Commission to grant licenses or construction permits involving any use of the electromagnetic spectrum to a qualified applicant through the use of a lottery system. The statute gave the Commission the discretion to determine when the use of a lottery to grant licenses or permits was appropriate. Any use of a lottery system by the Commission, however, was required to incorporate "significant preferences" to "groups or organizations, or members of groups or organizations, which are underrepresented in the ownership of telecommunications facilities or properties." 47 U.S.C. 309(i)(3)(A). The intent of the Congress in requiring such significant preferences in the administration of a lottery was to increase the number of media outlets owned by such underrepresented persons or groups, thereby fostering diversity of ownership in the media of mass communications. Conference Report on H.R. 3982. Omnibus Budget Reconciliation Act of 1981—Book 2, H.R. Rep. No. 97-208, 97th Cong., 1st Sess. 897 (1981).

Because of Congressional desire that the FCC proceed expeditiously to implement a lottery scheme, the statute directed the Commission to establish rules for a system of random selection, "not later than 180 days after the effective date" of the Act. 47 U.S.C. 309(i)(4)(A). The 180 day period expired on February 9, 1982. On February 8, 1982, the Commission held a public meeting to announce that it would "decline" to adopt rules governing a lottery system, stating that it found the requirements of the statute to be ambiguous and unworkable. Random Selection or Lotteries, Report and Order, FCC General Docket No. 81-768 (1982). The Commission stated that it did "not believe that Congress would intend for [it] to expend [its] limited resources to draft and defend rules creating a lottery framework which would not be used." Random Selection or Lotteries, Report and Order, FCC General Docket No. 81-768, footnote at page 28 (1982). While the Commission cited legal and administrative difficulties with the statute, it did not seek any type of formal direction or clarification from the Congress prior to the expiration of the 180 day period as to how a lottery system might be

designed. It was only after certain members of the Congress expressed their view that the Commission's abdication of its statutory responsibility must be rectified, that the Commission sought additional guidance from the Congress.

The Conferees considered this action to be in clear violation of the plain language of the statute, which mandated that the Commission prescribe lottery rules within 180 days, while permitting the agency discretion only with respect to when a lottery would actually be used. It was felt that as a creature of Congress, the Commission must obey the directives of its creator, and that it is not for the FCC to presume legislative intent when Congress clearly mandated that an action be taken, or to refuse to take action because it felt that Congress had not passed the precise lottery statute it wanted. Several Members considered this to be a violation of Federal law which totally thwarted Congressional intent that generic lottery rules be established and available for use as soon as possible. This was so that if at any time the present or some future Commission wished to utilize a lottery process, the rules would already be in place and there would be no delays brought about by having to then take the time to develop a generic lottery process.

The amendments to the lottery statute in the Conference Substitute and the legislative history contained in the detailed section-by-section analysis which follows are intended to give the Commission the additional guidance and clarification it said it needed to establish lottery rules. The amendments retain the principles which were agreed upon by both the House and Senate during the budget reconciliation process.

FINANCIAL INTERESTS OF MEMBERS AND EMPLOYEES OF FEDERAL COMMUNICATIONS COMMISSION

House bill

The House bill contained no provision.

Senate amendment

The Senate amendment section 4(b) of the Communications Act of 1934 by replacing the absolute bar on the ownership of any interest in any company involved in wire or radio communications or in the manufacture or sale of wire or radio equipment with a standard that prohibits ownership only when there exists a "significant interest" in communications, manufacturing, or sales activities which are subject to regulation by the Commission, and sets forth reasonable guidelines as to when the standard is met.

Conference substitute

The conference substitute adopts the Senate provision, with one change. Section 4(b)(5) of the Act, drafted when the FCC had seven members, has been amended in the Conference Substitute to establish a formula for political balance in Commission membership, regardless of the size of the Commission.

The statutory restriction imposing an absolute bar on ownership interests, addressed by the Senate amendment, has proven to be a hardship, particularly for staff employees who may have minor securities holdings in firms which deal only peripherally with "wire

or radio communications." For example, a Commission employee working in the common carrier bureau is forbidden from owning even one share of stock in a bus company which incidentally might own and operate radios on its transportation vehicles.

As the Commission has observed in addressing this prohibition, in the telecommunications age there is scarcely a major enterprise which is not in some way connected with a telecommunications product or service. Employee Financial Interests, Notice of Proposed Rulemaking, 45 Fed. Reg. 47885 (July 17, 1980). For example, radio communications are used and Commission licenses are held by businesses such as airlines, railroads, maritime vessels, taxicabs, and numerous other industries. Additionally, virtually every large retail establishment sells equipment regulated by the Commission (e.g., radios, television, microwave ovens).

The language amending Section 4(b)(2) of the Communications Act specifies a two-fold requirement that must be met before the prohibition would be applicable: (1) the interest or activity must fall within the parameters of at least one of four specified categories involving significant regulation set out in the legislation; and (2) the entity involved must have a significant interest in activities subject to Commission regulation. The Conferees intend that these ownership prohibitions be read separately. For example, a company that has certain operations which are "significantly regulated" by the Commission would not necessarily have a "significant interest" in activities subject to Commission regulation. The Conferees believe that this provision will add integrity to the regulatory process by assuring that members and employees of the agency will not have conflicts of interest of any meaningful consequence, while at the same time not precluding financial interests in matters that are only remotely related to the agency's activities.

In addition, the provision would permit the Commission to waive the conflict of interest prohibitions for Commission employees (but not Commissioners) if the Commission determines that the financial interests of the involved employee are minimal. This waiver authority is subject to 18 U.S.C. 208, which essentially prohibits an employee from participating in any matter in which the employee has a financial interest (subject to another waiver provision where the interest is so insubstantial as to be deemed unlikely to affect the integrity of the employee's services). Any exercise of this waiver authority must be accompanied by publication of such action in the Federal Register and notification of both the House and Senate Authorization Committees in order to retain Congressional oversight and pubic confidence in the Commission's regulatory responsibilities. The Conferees intend that the Commission exercise this waiver authority with the utmost care and propriety.

The Conferees note that the amendment to section 4(b) also deletes a sentence which prohibits any Commissioner who has not served his full term from representing any person before the Commission in a professional capacity for one year following the termination of his service. The Committee wishes to emphasize that the purpose of this deletion is only to make the Communications Act consistent with the conflict of interest rules which govern all Federal officials, the Ethics in Government Act, as amended 18 U.S.C. 207 (1978). The Committee notes that the prohibitions in the Ethics

in Government Act are stronger than those presently in section 4(b) of the Communications Act, and that it intends that these stricter requirements govern former FCC officials.

APPOINTMENT, TERMS OF OFFICE, SALARY, AND COMPENSATION OF MEMBERS OF COMMISSION

House bill

The House bill contained no provision.

Senate amendment

This section allows the Commission, under certain circumstances, to accept reimbursement from non-governmental entities for travel and related expenses incurred by Commissioners and employees attending non-government-sponsored functions. The provision will expire at the end of fiscal year 1985.

Conference substitute

The conference substitute adopts the Senate provision.

In order to keep in touch with the industries and individuals they regulate, Commissioners and Commission employees have found it useful to travel on occasion to different parts of the country on official business to attend conferences, conventions, and meetings. These trips range from Commissioners' participation in industry-wide conventions, to a bureau chief's panel appearance in an educational institution's symposium, to a division head's meeting to explain a new FCC rule to a small group of licensees. Given the rapid technological changes which are occurring in the telecommunications industry, and the continuing introduction of new communications services and facilities to the public, the ability of the Commission to travel is a relatively significant aspect of its service to the public.

The reimbursement experiment is designed to supplement appropriations to the Commission during a period in which the Commission's responsibilities, particularly in the area of common carrier regulation, are projected to increase, while Congress moves to reduce federal government expenditures. The Committee recognizes that attendance by Commissioners and Commission employees at non-governmental conventions and meetings generate valuable exchanges between government officials and non-governmental groups and should be allowed to continue at reasonable levels. Appropriated travel funds saved hereby should be used to pay for other high-priority non-travel expenses of the Commission.

The Conferees further intended that such reimbursement, in general, should be permissible notwithstanding the provisions of any other statutes, regulations, executive orders or similar restrictions which ordinarily would bar the receipt of such reimbursements from any source.

As part of the program of budget austerity, the amount of money available for travel by Federal agencies is being reduced. This might well have a negative impact upon the Commission's ability to participate in industry functions intended to offer those subject to FCC regulation a better opportunity to interface with Commissioners and staff. As the amount of moneys appropriated to the

Commission for travel decreases, smaller organizations and non-profit or educational groups in particular may find themselves out of the Commission's travel picture. Meanwhile, at the present time, those groups which could easily afford to pay the necessary expenses for Commissioners' and Commission employees' travel to their functions are prevented from doing so.

Currently, no independent regulatory agency has the authority to accept travel reimbursement from private parties except with respect to a very limited number of groups. However, given the rather severe budget constraints facing the Commission, providing for an experimental period to test the operation of a limited travel reimbursement mechanism over which Congress could exert strong oversight, preserves Congressional control while enhancing budgetary resources for travel purposes. Thus, the Conference Substitute establishes a limited travel reimbursement mechanism, which will sunset after three years, and is intended to alleviate some of the budgetary pressures which might inhibit the ability of Commissioners and Commission staff to travel.

To ensure Congressional oversight, the amendment to Section 4(b) includes three significant limitations on the Commission's reimbursement authority. First, the total amount that the Commission could travel in any fiscal year is limited to the level of travel money appropriated for the Commission for such fiscal year. In this way, the Commission is not given carte blanche with respect to travel, while Congress continues to decide the overall degree of travel which would be appropriate in any given year. Second, the Commission is required to report to Congress, as well as publicly report, any instances in which it receives travel reimbursements under this section. Third, the entire travel reimbursements section, since it is intended to be an experiment, commences with the beginning of fiscal year 1983, and sunsets at the end of fiscal year 1985.

The Conferees wish to emphasize that during this experimental period, the Commission is not to neglect groups or organizations which do not have the means to reimburse the Commission for its travel expenses. The Conferees intend that the Commission attend and participate in conventions, conferences, and meetings held by non-profit, public interest, educational, and other groups at roughly the same or higher level as in previous years.

The amount of reimbursement permitted is limited to the travel appropriation specified by Congress for each fiscal year. Congress may wish to raise the present ceiling on Commission travel if it feels that additional travel is warranted, particularly if it appears that such additional travel would likely be funded by non-governmental sources. The Conferees intend that, in the absence of an express limitation on the amount of moneys which the Commission can expend on any given fiscal year, the reimbursement limit will be the figure listed as "Travel and Transportation of Persons" contained in the President's Annual Budget Estimate for the Commission. Appropriated travel moneys saved through the reimbursement mechanism may be "reprogrammed" between programs and activities for other uses in the Commission's budget to the extent permissible under existing law. These limits may be exceeded only

upon written approval by both House and Senate Appropriations Committees.

The Conferees note that the Commission currently has experience with the travel reimbursement process, since federal law permits acceptance of reimbursement from certain private non-profit organizations for government travel expenses. *See, e.g.,* 5 U.S.C. 4101 *et. seq.* Under its current practice, the Commission pays all the proper expenses of the Commission traveler from its general appropriation; subsequently, the Commission bills and receives reimbursement from the sponsoring private non-profit organization, crediting its appropriation by the amount of reimbursement. The Committee intends that these procedures serve as the model for implementation of this provision notwithstanding any contrary provision of law. See 31 U.S.C. 484 (1976). In no instance should private entities make direct payments to or provide transportation tickets for Commissioner or Commission employees.

The quarterly reports required by Section 3 shall consist of the following information: a) the dates and brief description of the private event, b) the name and address of the sponsoring organization, c) number of Commissioners, and number and title of employees who attended the event, and d) the total amount of reimbursement, subdivided into travel, room, board, and other expenses. These shall be filed, within thirty days after the close of each fiscal quarter, with the House and Senate Commerce and Appropriations Committees.

USE OF AMATEUR VOLUNTEERS FOR CERTAIN PURPOSES

House bill

The House bill contained no provision.

Senate amendment

The Senate amendment provided a statutory basis for the present Commission practice of permitting amateurs of a higher license class to voluntarily administer novice (entry) class amateur radio license examinations to candidates and extends the concept to include the volunteer administration of all classes of amateur licenses. To guard against conflicts of interest, persons who own a significant interest in or are employees of any entity involved in the manufacture of distribution of amateur radio equipment, or involved in the preparation or distribution of publications which may be used as study aids for amateur license exams are disqualified from volunteering to administer amateur exams. The Senate amendment also authorizes the Commission to utilize the volunteer assistance of amateur licensees in the preparation of amateur license exams, notwithstanding any contrary provision of law. See generally, 31 U.S.C. 665(d) (1976).

Conference substitute

The conference substitute adopts the Senate provision.

There are five classes of amateur radio licenses with admission to higher license classes contingent upon the satisfactory completion of progressively more challenging license examinations. These examinations are presently administered by FCC personnel, gener-

ally those in the Field Operations Bureau. Due to resource and personnel reductions, the opportunity to take amateur license examinations is extremely limited. In some areas of the United States, amateur examinations can only be given once per year as a result of shortages of personnel in the Commission's Field Operations Bureau. Should a person not pass an amateur examination the first time, up to two years can pass without an individual having an amateur license. The benefits of amateur radio to individuals, especially young people, including technical self-training and knowledge of electronics should not be denied to such persons on the basis of personnel shortages at the Commission.

To help alleviate this problem, for several years amateurs of a higher license class have voluntarily administered novice (entry) class amateur radio license examinations to candidates. After administering the exam, the volunteer mails the written portion of the exam to the Commission for grading. This has saved Commission resources and provided a convenient method of administering these entry level examinations, especially to young people interested in radio.

The Conferees believes that this use of volunteer services by licensed amateurs by the Commission is a beneficial and efficient utilization of manpower in the public interest. Thus, the Conference Substitute provides a statutory basis for present Commission practice and extends the concept to include the volunteer administration of all classes of amateur licenses. To guard against conflicts of interest, persons who own a significant interest in or are employees of any entity involved in the manufacture or distribution of amateur radio equipment, or involved in the preparation or distribution of publications which may be used as study aids for amateur license exams are disqualified from volunteering to administer amateur exams.

This provision also authorizes the Commission to utilize the volunteer assistance of amateur licensees in the preparation of amateur license exams, notwithstanding any contrary provision of law. See generally, 31 U.S.C. 665(d) (1976). The FCC's failure to update and revise written examinations has resulted, through repetition, in compromise of the examination system. The Conferees note that at least one firm has published study aids which include the exact questions contained in current FCC amateur license exams. This has enabled some to pass amateur exams on the basis of rote memory rather than an understanding of FCC regulations. By permitting the Commission to accept suggested questions for various classes of amateur license exams from the licensees themselves or from amateur radio operator organizations, the Commission will be able to amass a larger pool of examination questions. The Conferees expect that volunteering individuals and organizations will protect against the premature disclosure to the public of submitted questions.

Another important consequence of the diminishing resources of the Commission's Field Operations Bureau, is the inadequacy of monitoring and enforcement services in both the amateur and Citizens Band (CB) radio services. This section authorizes the use of volunteers from the amateur and CB radio services to assist the Commission in monitoring for violations in their respective serv-

ices. While these volunteers may issue advisory notices to apparent violators, they may not impose sanctions or take any other enforcement action against violators. See Section 4(f)4 (C) and (D) of the Communications Act of 1934.

This provision also makes it clear that all volunteers will serve without compensation and will not be deemed employees of the Federal Government for the purpose of receiving any benefits as a result of their services.

The Conference Substitute should help conserve Commission resources by giving statutory approval to the use of amateur radio volunteers who will complement the Commission's staff in carrying out licensing and monitoring responsibilities. The use of CB volunteers for monitoring assignments should yield similar benefits.

ORGANIZATION AND FUNCTIONING OF COMMISSION

House bill

The House bill contained no provision.

Senate amendment

The Senate reduced the minimum composition or quorum of the FCC's Review Board established by section 5(d) of the Communications Act of 1934, from three to two employees.

Conference substitute

The conference substitute adopts the Senate provision.

Section 556(b) of the Administrative Procedure Act, 5 U.S.C. ss 556(b), provides that a federal administrative agency may designate employee boards to preside over specified classes of proceedings. The FCC's employee board, which is known as the Review Board, on occasion, has not been able to issue decisions either because one of its members was disqualified from participating in a particular proceeding, a member was absent due to long illness or because a vacancy on the Board was unfilled.

By reducing the Board's minimum composition or quorum requirement to two employees, the problems caused by disqualification, prolonged illness, and prolonged vacancies should be alleviated. Where a deadlock occurs on a two-member panel, the Committee expects that such proceedings be certified to the full Commission for final disposition.

This section also deletes obsolete language.

POLE ATTACHMENTS

House bill

The House bill contained no provision.

Senate amendment

The Senate repealed Section 224(d) and 224(e) of the Communications Act of 1934.

Conference substitute

The Conferees agreed to the Senate provision deleting Section 224(e) but voted to retain Section 224(d) in current law.

On February 21, 1978, the President signed into law P.L. 95-234, which grants the Federal Communications Commission jurisdiction to regulate the rates, terms, and conditions for the attachment of cable system transmission lines to utility poles, where pole attachments are not regulated by a state. The purpose of requiring the regulation of the pole attachment rates was to provide that the rates are "just and reasonable". The statute imposes a methodology on the FCC to determine appropriate rates. This methodology expires five years after the date of enactment.

The Pole Attachment Act has brought considerable certainty regarding the price of access to utility poles. Further, it has encouraged private settlements by parties to a dispute. It has saved the FCC money by reducing the number of disputes brought to the Commission for administrative action. The FCC has administered the methodology set forth in subsection (d) by applying a formula which deals with all parties concerned.

The Conferees recognized that the FCC has the discretion to continue to use the standard called for in Section 224(d) if that subsection were permitted to expire. Further, the Commission has shown no indication that it would change the existing formula. In the event that the requirement of the formula established by Section 224(d) were permitted to expire, it would increase the likelihood that parties would petition to alter the formula by rulemaking, with resulting increased burden on the FCC and uncertainty in the industry until such issues were resolved.

Finally, the Conferees recognized that Section 224(e) was added to the Section because Congress was uncertain whether the methodology established by the statute would work. In the face of evidence indicating the effectiveness of this provision, the Conferees agreed that it should remain in the statute. Accordingly, the sunset provision of Section 224 has been deleted, while the methodology established in that Section will remain in force.

JURISDICTION OF COMMISSION

House bill

The House bill contained no provision.

Senate amendment

The Senate amended Section 301 of the Communications Act of 1934 to make clear that the Commission's jurisdiction over radio communications extends to intrastate as well as interstate transmissions.

Conference substitute

The conference substitute adopts the Senate provision.

The present statutory ambiguity imposes wasteful burdens on the Commission and various United States Attorneys, particularly with regard to prosecution of Citizens Band (CB) radio operators transmitting in violation of FCC rules. Typically in such a case, the defendants concede the violation, but challenge the Federal Government's jurisdiction on the ground that the CB transmission did not cross state lines. To refute this argument, the Commission invariably is asked to furnish engineering data and expert witnesses,

often at considerable expense. In most instances, once the expert evidence is made available, the defendants plead guilty and the case terminated.

The provision would end these wasteful proceedings. Further, it would make Section 301 consistent with judicial decisions holding that all radio signals are interstate by their very nature. See, e.g., *Fisher's Blend Station Inc.* v. *Tax Commission of Washington State,* 297 U.S. 650, 655 (1936).

INTERFERENCE WITH ELECTRONIC EQUIPMENT

House bill

The House bill contained no provision.

Senate amendment

The Senate amends Section 302(a) of the Communications Act of 1934 and authorizes the Commission to establish minimum performance standards for "home electronic equipment and systems" to take appropriate action in order to protect such equipment from radio frequency interference (RFI).

Conference substitute

The conference substitute adopts the Senate provision.

For many years, public complaints have persisted about radio frequency interference to consumer electronic equipment, such as televison sets and radio receivers. This interference has often been attributed to transmissions from the Amateur and Citizens Band (CB) radio services.

The Conferees wish to emphasize that it was its hope that voluntary efforts by manufacturers to reduce RFI when possible, as opposed to the use of government regulation, would be sufficient. Devices designed and marketed for use in a commercial environment normally include necessary protection against interference and do not require Commission regulation. In the market for home devices, however, good faith industry attempts to solve this interference problem have not always been as successful. Thus, in view of complaints regarding home devices, the Conferees believe that Commission authority to impose appropriate regulations on home electronic equipment and systems is now necessary to insure that consumers' home electronic equipment and systems will not be subject to malfunction due to RFI. However, the legislation does not mandate Commission exercize of this authority; that decision is well within the technical expertise of the agency.

The Conferees intend that the Commission's authority apply only to "home electronic equipment and systems" likely to be found in a private residence and intended for residential use, as distinguished from devices intended for office and business use. Radio and television sets would be typical examples of equipment subsumed under the term "home electronic equipment and systems." Other examples include home burglar alarm and security systems, automatic garage door openers, electronic organs, record turntables, and stereo/high fidelity amplifier systems. Although this legislation is aimed primarily at home equipment and systems, it is not intended to prevent the Commission from adopting standards for such de-

vices which are also used outside the home. Portable TV receivers and radios as well as medical alert devices, for instance, are intended to be covered.

A number of alternatives are available to the Commission in exercising the authority granted hereunder. The Commission could direct manufacturers of some types of home electronic equipment and systems to meet certain minimal standards by incorporating an interference suppression capability into their devices before the equipment is offered for sale. On the other hand, the Commission may choose to require only a warning label on those types of home electronic equipment and systems for which the installation of filtering, shielding or other interference suppression components would be unreasonably costly in relation to the total price of the device, or where such installation otherwise is unreasonable or impractical. Such a warning could be given in a pamphlet or tag accompanying the equipment, and marketplace forces would determine the success of particular competitors who chose to rely on such warnings instead of actually building in the filtering devices necessary to fully protect against interference.

The Conferees expect the Commission to exercise the authority granted herein, as it has exercised the authority granted under section 302 of the Communications Act of 1934, by balancing the cost of improving the performance of a device to particular levels against the benefit to be gained from requiring manufacturers to meet standards of various levels of stringency. In so doing, the Conferees expect the number of interference complaints recorded and investigated by the Commission to be significantly reduced.

The Conference Substitute is further intended to clarify the reservation of exclusive jurisdiction to the Federal Communications Commission over matters involving RFI. Such matters shall not be regulated by local or state law, nor shall radio transmitting apparatus be subject to local or state regulation as part of any effort to resolve an RFI complaint. The Conferees believe that radio transmitter operators should not be subject to fines, forfeitures or other liability imposed by any local or state authority as a result of interference appearing in home electronic equipment or systems. Rather, the Conferees intend that regulation of RFI phenomena shall be imposed only by the Commission.

QUALIFICATIONS OF STATION OPERATORS

House bill

The House bill contained no provision.

Senate amendment

Section 303(l) of the Communications Act authorizes the Commission to grant radio operator licenses to citizens and nationals of the United States. The Senate broadened this category to include aliens who are legally eligible for employment in the United States.

Conference substitute

The conference substitute adopts the Senate provision.

Under current law, aliens must undergo an extensive time and resource consuming waiver procedure to obtain commercial radio operator licenses. For example, an alien aircraft mechanic or baggage handler seeking employment with an airline cannot obtain the necessary Restricted Radio Operator Permit for aircraft radio communications needed in those jobs without an express waiver from the Commission. The Commission will thus be spared these extensive and time consuming waiver proceedings. The change being proposed here would continue to have the effect of excluding undocumented aliens or other aliens not eligible for employment in the United States. See 8 C.F.R. Part 109 (1981).

In addition, the Conference Substitute would make a minor technical change in other language in Section 303(1). Current law exempts from the citizenship requirement persons holding United States pilot certificates which are valid in this country because of reciprocal agreements between the United States and the foreign country involved. To achieve consistency, the standard for such reciprocal agreements would be changed from one of citizenship to one of eligibility for employment. The intent here is not to narrow the number of persons falling within the scope of the existing law, but merely to make Section 303(1) internally consistent.

GROUNDS FOR SUSPENSION OF LICENSES

House bill

The House bill contained no provision.

Senate amendment

The Senate amended Section 303 of the Communications Act to allow the Commission to suspend the license of any operator who causes, aids or abets in a violation of the Act or the Commission's rules.

Conference substitute

The conference substitute adopts the Senate provision.

Currently, the Commission cannot take such action against the increasing number of operators who illegally advise, equip, or otherwise assist applicants seeking communications facilities. This provision authorizes the Commission to suspend licenses when serious violations occur.

LICENSING OF CERTAIN AIRCRAFT RADIO STATIONS AND OPERATORS

House bill

The House bill contained no provision.

Senate amendment

The Senate amended Section 303 of the Communications Act of 1934 and authorizes the recognition of certain aircraft radio licenses issued by foreign nations. It would authorize a means to permit a foreign aircraft operator who leases a U.S.-registered aircraft to have the aircraft radio equipment licensed by the foreign country.

Conference substitute

The conference substitute adopts the Senate provision.

The conference substitute conforms to the Communication Act to recently proposed amendments to the International Telecommunications Union Radio Regulations and to other international agreements which allow the State of Registry of an aircraft (operated under a lease, charter, or other such arrangement in a second country) to transfer certain functions and duties to that country.

Section 301(e) of the Communications Act of 1934 requires radio equipment on domestic aircraft to be licensed under the provisions of the Act. In light of the recent amendments to the Convention on International Civil Aviation and the ITU Radio Regulations (the ratification of which is pending in the United States), the Conferees intend by this amendment to Section 303 of the Act to provide an exception to Section 301(e) in situations where the Commission agrees to transfer licensing of United States aircraft and radio operators to another country.

REVISION OF LICENSE TERMS

House bill

The House bill contained no provision.

Senate amendment

The Senate amended redesignated Section 307(c) of the Act to expand the maximum license term for non-broadcast licenses from five to ten years, upon a Commission finding that the public interest would be served by such an action.

Conference substitute

The conference substitute adopts the Senate provisions.

A ten-year license term might be inappropriate, for example, in many of the Private Radio Services, where a current data base is necessary for accurate and current knowledge of spectrum availability and usage. For other services, however, where specific frequency assignments are not made to individual stations, ten-year license terms would not impede the Commission's spectrum management capabilities. The Conferees believe that, in authorizing the Commission to issue licenses for such terms where appropriate, the burden on the public and on the Commission will be lessened by reducing the number of renewal applications filed.

The Conference Substitute also eliminates the necessity for separate renewal of auxiliary broadcast station licenses, such as remote pickups, studio-transmitter links and intercity relay transmitters. Currently, over 10,000 auxiliary broadcast licenses outstanding must be renewed periodically by the Commission. A tremendous volume of paperwork is created in processing such licenses. Since these auxiliary licenses are contingent upon possession of the main station license, the terms for all related licenses should be concurrent.

AUTHORITY TO OPERATE CERTAIN RADIO STATIONS WITHOUT INDIVIDUAL LICENSES

House bill

The House bill contained no provision.

Senate amendment

The Senate amendment authorized the Commission to terminate the individual licensing of operators in the Citizens Band (CB) and radio control (RC) services if it determines that permitting the operation of these radio stations without individual licenses would serve the public interest, convenience, and necessity. The Commission would retain blanket licensing authority over CB and RC services and would continue to enforce its rules against and prohibit operation by any operator who violates these rules.

Conference substitute

The conference substitute adopts the Senate provision.

At present, CB and RC licenses are granted to virtually any person who files an application and, unlike broadcast and some other spectrum licenses granted by the Commission, confer no exclusive use of the spectrum. As a result, the grant of individual CB and RC licenses represent neither considered Commission approval nor the exclusive right to a particular frequency. Nonetheless, the cost of processing and granting the millions of license applications in these services has been substantial. Thus, this provision will produce significant savings without impairing important regulatory interests. Moreover, of the estimated twenty million operators in the CB service, some eight million are estimated to be operating without a license. This situation could create a regulatory nightmare for the Commission if serious attempts were made to remedy this situation.

The Conferees wish to emphasize that this provision authorizes only the "de-licensing" (of individual licenses) of the CB and RC services, and not the "deregulation" of such services. The Conferees fully intend the Commission to vigorously enforce the Communications Act and FCC rules relating to the CB and RC services, and to use its forfeiture authority against violators where necessary. Since the Commission would no longer have the ability to revoke a CB license if it chose to de-license the service, forfeiture authority should be exercised in a way that demonstrates a commitment to preserving the integrity of the CB service through enforcement. In addition, the authority granted the Commission in section 4 of this legislation to utilize CB volunteers will provide additional Commission resources to safeguard the integrity of the service.

AUTHORIZATION OF TEMPORARY OPERATIONS

House bill

The House bill contained no provision.

Senate amendment

The Senate lengthened the duration of Special Temporary Authority (STA) from 90 to 180 days, and allows the Commission to renew an STA for additional terms of 180 days each.

Conference substitute

The conference substitute adopts the Senate provision.

While the Conferees recognize that multiple STA renewals may be appropriate in extraordinary circumstances, it is emphasized that an applicant for STA renewal bears a heavy burden of showing, consistent with the test in Section 309(f), that a renewal should be granted.

RANDOM SELECTION SYSTEM FOR CERTAIN LICENSES AND PERMITS

House bill

The House bill contained no provision.

Senate amendment

The Senate bill amends Section 309(i) of the Communications Act of 1934, relating to the authority of the FCC to grant licenses or permits for the use of the electromagnetic spectrum through a system of random selection.

Conference substitute

The conference substitute adopts the Senate provision.

FCC discretion to use a system of random selection.—Section 309(i) of the Communications Act, as amended by this legislation, is intended to alleviate many of the delays and burdensome costs faced by both applicants and the Commission in an initial comparative licensing proceeding with mutually exclusive applicants. Use of a lottery system established pursuant to this subsection is discretionary with the Commission and such use is appropriate in the public interest within the parameters set forth below.

Relevant factors for the Commission's consideration in determining whether a lottery would serve the public interest would include: whether there is a large number of licenses available in the particular service under consideration; whether there is a large number of mutually exclusive applications for each license, for example, when a new service is initiated; whether there is a significant back-log of applications; whether employing a lottery would significantly speed up the process of getting service to the public; and whether selection of the licensee will significantly improve the level diversity of information available in the community versus the use of the traditional comparative hearing process. The Commission, in making this public interest assessment when diciding whether to utilize a lottery in a particular instance, should consider all of these factors.

With respect to the above criteria, if the traditional comparative process would provide a superior means of diversifying media ownership in particular instances, a service should not be subject to a lottery when to do so would undermine or thwart this policy goal, but all factors must be weighed. Diversification of media ownership

and information are central goals of the traditional comparative licensing process, and continued promotion of these goals should not be sacrificed merely because a lottery may be more expedient. This concern takes on its greatest significance when the particular license grant involves a service over which the licensee exerts substantial content control, as opposed to strictly common carrier services where the licensee does not appreciably affect the content of the communication. For example, the Commission would have an extremely heavy burden to meet in attempting to justify use of a lottery for purposes of granting an individual license for a full-power station (e.g., the fourth full service television station in a community), the licensing of which is unrelated to the initial grants of licenses for a new service. There, the flood of new applicants for a multitude of licenses in a newly created service, with all of the administrative problems attendent thereto, have not to date confronted the Commission. On the other hand, the Commission would be perfectly justified in using, and is in fact encouraged to use, a lottery when awarding licenses for low power television stations, which involves huge backlogs which would otherwise significantly delay service to the public if the traditional comparative hearing process were relied upon.

The conference substitute provides that the Commission adopt implementing rules within 180 days of the date of enactment of this Act. The Conferees wishes to emphasize that this is an absolutely mandatory requirement. Once these rules are established, the Commission shall have the authority to modify them as necessary and the discretion, based upon an articulated assessment of the public interest factors discussed above, to apply them to particular proceedings or classes of proceedings before it. The Conferees wish to emphasize their strong expectation that the Commission will exercise carefully its discretion to use a lottery system by making a finding that the public interest would be significantly benefited by using a lottery instead of a comparative hearing to select licenses or permits with respect to those services or instances in which it determines that use of a lottery would be appropriate. Use of a lottery without identifying a substantial public interest benefit flowing therefrom would disserve the Commission's ultimate statutory goal of obtaining the best practicable information service from diverse sources.

The Conferees intend that the Commission, in making this public interest finding, should not apply the aforementioned factors mechanically or without regard to other salient considerations. For example, the Conferees note that the mere existence of a backlog of applications is not itself a sufficient reason for employing a lottery.

The Conferees also wish to emphasize as strongly as possible their firm intention and expectation that the Commission will use a lottery to expedite the processing of low power television service and translator facilities. Low power television and translator service is the ideal service for which to use a lottery, given the large number of licenses available, the large number of mutually exclusive applications for each license, the substantial backlog of applications on file with the Commission, the likeliihood that the use of a lottery is essential to expediting the process of getting low power television service to the public, and the likelihood that bringing low

power television service to the public quickly, through the use of a lottery, will result in a significant increase in the diversity of information sources available in many communities throughout the country.

The Conferees do not intend for this provision to be construed to prevent the Commission from granting licenses or permits in "blocks" of frequencies where it determines that this would serve the public interest (e.g., the proposed multi-channel multipoint distribution service).

Qualification of applicants in a random selection system.—It is the intent of the Conferees that, prior to the use of a lottery in a particular proceeding, the Commission conduct a preliminary review of each application submitted to determine that it is acceptable for filing. The Conferees expect that the Commission will use the standards for acceptability set out in *James River Broadcasting Corp.* v. *FCC,* 399 F.2d 581 (D.C. Cir. 1968), unless, by rule, it has adopted or shall adopt different standards. See, e.g., 47 C.F.R. 73.3564, 22.20. Following the lottery, the Commission shall determine that the applicant selected therein is fully qualified to become a licensee under 308(b) and 309(a). Should the applicant selected be found not to be so qualified, the Commission shall conduct another lottery, if necessary, and select another applicant. It is the intention of the Conferees that determinations under Section 308(b) and 309(a) need be made only as to the applicant who has been selected by lottery.

It is only at this latter, post-lottery stage that petitions to deny the application need be considered and that the right to a hearing may arise. This hearing may be a "paper hearing" unless the Commission determines, by rule or by decision in a particular case, that due process or other public interest considerations require some or all of the hearing to be conducted by any responsible employee or employees, including Bureau Chiefs or their delegates, to whom the Commission shall, by rule, delegate such functions. If the Commission chooses to delegate the function of presiding over these paper hearings to employees other than Administrative Law Judges (ALJ), the Commission must assure that the examiner or reviewer is truly independent in order to avoid any undue influence in the fact-finding process. Here the Conferees wish to emphasize that use of non-ALJs to govern hearings is strictly limited to post-lottery hearings. This does not imply that similar delegation would be acceptable with respect to the traditional comparative hearing process.

The Conferees wish to emphasize that the qualifications set out in Section 308(b) are not diminished in importance. By permitting the FCC to make the findings after an applicant is selected, it is intended that the Commission will be able to conduct a more thorough and in-depth inquiry than it could if it had to make a finding as to the qualifications of all applicants. Moreover, to preserve the incentives of the other applicants to raise questions concerning their competitors' qualifications, if the intitial "winner" is determined to be unqualified, the subsequent lottery must be conducted with the same applicant pool with each applicant's selection probabilities recomputed as necessary (see below).

The Conferees note that requiring the Commission to find the applicant selected by the lottery fully qualified prior to the grant of the license to that applicant protects the public from unqualified licensees, while affording the Commission the relief from the burden of having to pass on the full range of qualifications of every applicant. As with the use of non-ALJs to conduct hearings, the post-selection assessment of qualifications process is strictly limited to the lottery context and should not be utilized in the traditional comparative process.

Application of preferences in a random selection system.—It is the firm intent of the Conferees that traditional Commission objectives designed to promote the diversification of control of the media of mass communications be incorporated in the administration of a lottery system under section 309(i), as amended by this legislation. The Commission's application of its Policy Statement on Comparative Broadcast Hearings, 1 F.C.C.2d 393 (1965), has resulted in significant comparative advantages to minority-controlled applicants and to applicants with a low degree of ownership interest in mass communications media. While the degree of advantage, merit, or preference heretofore awarded to such applicants need not be precisely duplicated in the administration of a random selection system, the Conferees expect that the Commission's lottery rules will provide significant preferences to applicants (especially those who are minority-controlled), the grant to whom of the license or permit sought would increase the diversification of the media of mass communications. The Conferees intend that two distinct diversity preferences be applied where appropriate: a media ownership preference and a minority ownership preference.

The underlying policy objective of these preferences is to promote the diversification of media ownership and consequent diversification of programming content. This diversity principle is grounded in the First Amendment, as illuminated in a line of cases in large part stemming from *Associated Press* v. *United States,* where the Supreme Court stated that the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." 326 U.S. 1, 20 (1945). Thus, in finding that the "public interest, convenience, and necessity" would be served by granting a given mass communications media license, "the Commission simply cannot make a valid public interest determination without considering the extent to which the ownership of the media will be concentrated or diversified by the grant of one or another of the applications before it." *Citizens Communications Center* v. *FCC,* 447 F.2d 1201, 1213 n. 36 (D.C. Cir. 1971).

The nexus between diversity of media ownership and diversity of programming sources has been repeatedly recognized by both the Commission and the courts. For example, in promulgating its "concentration of control" regulations, the Commission stated that "the fundamental purpose of this facet of the multiple ownership rules is to promote diversification of program and service viewpoints as well as to prevent any undue concentration of economic power contrary to the public interest." Amendment of Sections 3.35, 3.240, and 3.636, Report and Order, 18 F.C.C. 288 (1953), aff'd, *United States* v. *Storer Broadcasting Co.,* 351 U.S. 192 (1956). In its rule-

making on low power television, the Commission noted that it has received expressions of interest from minorities wishing to develop new services and that it "specifically encourages this interest, and fully intends that the inauguration of this new broadcast service be the occasion for assuring enhanced diversity of ownership and of viewpoints in television broadcasting." Low Power Television Broadcasting, Notice of Proposed Rulemaking, 82 F.C.C. 2d 47, 77 (1980). In *TV 9, Inc.* v. *FCC,* a landmark case dealing with comparative merit for minority applicants, the court stated "that it is upon ownership that public policy places primary reliance with respect to diversification of content, and that historically has proved significantly influential with respect to editorial comment and the presentation of news." 495 F.2d 929, 938 (D.C. Cir. 1973), *cert. denied,* 418 U.S. 986 (1974).

Common carrier licensees are often not engaged in the provision of information or mass media services over their facilities which they control. When common carrier licensees do exert such control, by definition they do not exclusively control the content of the information or programming which is transmitted over their facilities. Thus, Section 309(i), as amended by this bill, only requires significant preferences to be applied to licenses or construction permits for any media of mass communications. This permits the Commission to use a lottery without preferences for services such as common carrier "beepers," for which there is a large back-log of applications.

A question arises as to the administration of a lottery in services which may be neither clearly common carrier nor broadcast entities (such as multipoint distribution service), or services in which the applicant may be able to self-select either common carrier or broadcast status (such as the Commission's treatment of the direct broadcast satellite service). The Conferees intend that the Commission apply significant preferences, if it decides to use a lottery system for these services, to the extent that the licensees have the ability to provide under their direct editorial control a substantial proportion of the programming or other information services over the licensed facilities. If such services are treated by the Commission in the future strictly as common carrier services with no ability on the part of the licensee to exercise direct editorial control over a substantial proportion of the programing offered over its facilities, no preferences need be applied in using a lottery system for those services.

Characteristics of the preferences.—One important factor in diversifying the media of mass communications is the degree of applicants' ownership interest in other media of mass communications. The definition of media of mass communications relevant here includes the entities listed in section 309(i)(3)(C)(i), as amended by this Act, plus daily newspapers, which the Commission has long regarded as important in considering the diversification of the media. See, e.g., Multiple Ownership of Standard, FM and Television Broadcast Stations, Second Report and Order, 50 F.C.C.2d 1046, modified, Memorandum Report and Order, 53 F.C.C.2d 589 (1975), aff'd sub nom., *FCC* v. *Nat'l Citizens Comm. for Broadcasting,* 436 U.S. 775 (1978); Policy Statement on Comparative Broadcast Hearings, 1 F.C.C.2d 393, 394-95 (1965).

To the degree an applicant for a license or permit for the media of mass communications has controlling interest in no other, or few other, media entities, the policy of diversifying media ownership would be promoted by the grant of the license to such an applicant. Thus, the Conferees intend that in the administration of a lottery to be used for granting licenses or construction permits for any media of mass communications, the Commission award a significant media ownership preference to those applicants whose owners control no other media of mass communications. The Conferees believe that the amount of this preference must be no less than a fixed relative preference of 2:1 for each such application. Thus, each such situated applicant must be awarded a preference so that its chances of being granted the license in a lottery are at least doubled from what its chances would be if a straight random selection process without preferences were conducted. Similarly, a media ownership preference should be awarded to those applicants whose owners, when aggregated, have controlling interest (over 50%) in 1, 2, or 3 other media of mass communications. The Conferees believe that the amount of this preference must be no less than a fixed relative preference of 1.5:1 for each such application. No media ownership preference should be awarded to applicants whose owners, when aggregated, have controlling interest (over 50%) in more than 3 other media of mass communications properties.

The Conferees are concerned that the objectives of this media ownership preference scheme might be diluted where there are large numbers of applicants in a given use of a lottery. To help insure that these preferences have appreciable impact on the results of the lottery, adjustments in the preferences awarded may be required where there is a relatively large number of total applicants compared to the number of applicants deserving of the media ownership preference.

The Conferees intend that the Commission assign applicants to groups based on the number of other media of mass communications owned. A specific multiplier (preference) factor should be applied to each applicant in a given group, the factor varying inversely with the number of media of mass communications owned by the applicants in that particular group. After the appropriate preference factor is applied to each preferred applicant, the overall likelihood of selecting an applicant from one of the preferred groups should be calculated. If this probability does not meet or exceed .4, the individual applicant selection probabilities should be recomputed to bring the combined preferred group probabilities to no less than. 4 (See Administering the System of Random Selection, infra).

A second important factor in diversifying the media of mass communications is the degree of applicants' ownership interest in other media of mass communications which are in, or close to, the community being applied for. See Policy Statement on Comparative Broadcast Hearings, 1 F.C.C. 2d 393, 395 (1965). The Commission has recognized the importance of this factor in promulgating local cross-ownership rules barring the common ownership of a VHF television station and an aural (AM or FM radio) station in the same community, Multiple Ownership of Standard, FM and Television Broadcast Stations, First Report and Order, 22 F.C.C. 2d 306 (1970), modified, Memorandum Opinion and Order, 28 F.C.C. 2d 662

(1971), and barring daily newspaper—broadcast station combinations under common ownership in the same community, Multiple Ownership of Standard, FM and Television Broadcast Stations, Second Report and Order, 50, F.C.C. 2d 1046, modified, Memorandum Report and Order, 53 F.C.C. 2d 589 (1975), aff'd sub nom. *FCC* v. *Nat'l Citizens Comm. for Broadcasting,* 436 U.S. 775 (1978).

The Conferees strongly believe that the avoidance of local ownership concentration should continue to be a factor of major significance in promoting diversity in the licensing process. Where an applicant for a license or permit has controlling interest (over 50 percent) in any other medium of mass communications which would be co-located with the licensed facility sought, it would not promote diversity to give such an applicant a preferred status relative to other applicants. Thus, in the administration of a lottery system to be used for licenses or permits in the media of mass communications, no media ownership preference should be awarded to any applicant whose owners, when aggregated, have controlling interest (over 50 percent) in any medium of mass communications which is licensed to serve, franchised to serve (in th case of a cable television system), or primarily serves (in the case of a daily newspaper) the community of license for which of the grant is sought.

The Conferees expect that the Commission will make certification as to whether or not an applicant has a controlling interest in any media of mass communications in the community of license of the grant sought a prerequisite for an acceptable application for a license or permit for a medium of mass communications. Applicants who do have such ownership interests should be ineligible for a media ownership preference, notwithstanding the possibility that they might otherwise receive a preference by virtue of owning only a few media of mass communications. In sum, awards of licenses which would increase local media ownership concentration, by definition would not further the goal of diversifying media ownership, and thus the Conferees intend that such applications not be eligible for a diversity preference.

A third important factor in diversifying the media of mass communications is promoting ownership by racial and ethnic minorities—groups that traditionally have been extremely underrepresented in the ownership of telecommunications facilities and media properties. The policy of encouraging diversity of information sources is best served by not only awarding preferences based on the number of properties already owned, but also by assuring that minority and ethnic groups that have been unable to acquire any significant degree of media ownership are provided an increased opportunity to do so. It is hoped that this approach to enhancing diversity through such structural means will in turn broaden the nature and type of information and programming disseminated to the public. The Conferees find that the effects of past inequities stemming from racial and ethnic discrimination have resulted in a severe underrepresentation of minorities in the media of mass communications, as it has adversely affected their participation in other sectors of the economy as well. We note that the National Association of Broadcasters recently reported that of 8,748 commercial broadcast stations in existence in December 1981, only 164, or less than two percent, were minority owned. Similarly, only 32 of

the 1,386 noncommercial stations, slightly over two percent, were minority owned.

One means of remedying the past economic disadvantage to minorities which has limited their entry into various sectors of the economy, including the media of mass communications, while promoting the primary communications policy objective of achieving a greater diversification of the media of mass communications, is to provide that a significant preference be awarded to minority-controlled applicants in FCC licensing proceedings for the media of mass communications. The narrowly-drawn preference scheme established in section 309(i), as it is amended by this legislation, is intended to achieve such a purpose. Evidence of the need for such preferential treatment has been amply demonstrated by the Commission, the Congress, and the courts. See, in this regard, Statement of Policy on Minority Ownership of Broadcast Facilities, 68 F.C.C.2d 979 (1978); FCC Minority Ownership Taskforce, Report on Minority Ownership in Broadcasting (May 17, 1978) at 3, 7–9; and *Fullilove* v. *Klutznick,* 448 U.S. 448 (1980), and reports cited therein at 467 n.55. As the court stated in *Citizens Communications Center* v. *FCC*:

> The Commission . . . may also seek in the public interest to certify as licensees those who would speak out with fresh voice, would most naturally initiate, encourage, and expand diversity of approach and viewpoint. . . . As new interest groups and hitherto silent minorities emerge in our society, they should be given some stake in and chance to broadcast on our radio and television frequencies.

447 F.2d 1201, 1213 n.36 (D.C. Cir. 1971) (citation omitted).

The Conferees intend that in the administration of a lottery to be used for granting licenses or construction permits for any media of mass communications, the Commission award a significant minority ownership preference to those applicants, a majority of whose ownership interests are held by a member or members of a minority group. The Conferees believe that the amount of this preference must be no less than a fixed relative preference of 2:1 for each such application. For purposes of becoming eligible for this minority ownership preference, individuals who are participants in a group, partnership or corporate entities and who are members of different minority or ethnic groups should be allowed to aggregate their ownership interests to achieve a majority interest in any given application.

It is clear that the current comparative hearing process has not resulted in the award of significant numbers of licenses to minority groups. Many minority applicants are simply unable to participate in comparative hearings which often take a considerable period of time and require subtantial economic resources. The Conferees believe that a lottery preference scheme will greatly speed the process of initial licensing awards, and will permit not only greater numbers of minority groups to apply for licenses, but also will result in the award of a greater proportion of available licenses to minorities than has been the case to date.

It should be noted that such groups as women, labor unions, and community organizations which were mentioned in the legislative

history of the lottery statute that was originally adopted, Conference Report on H.R. 3982, Omnibus Budget Reconciliation Act of 1981—Book 2, H.R. Rep. No. 97-208, 97th Cong., 1st Sess. 897 (1981), are all significantly underrepresented in the ownership of telecommunications facilities. Such applicant groups would, of course, be eligible for both media ownership and minority ownership preferences if they meet the eligibility guidelines. The Conferees expect that such groups will also substantially benefit from this lottery preference scheme, and, consequently, the American public will benefit by having access to a wider diversity of information sources.

The operative definition of minority group is found in section 309(i)(3)(C)(ii), as amended by this bill. It is the Conferees intention that the definitions in Office of Management and Budget Statistical Policy Directive No. 15, "Race and Ethnic Standards for Federal Statistics and Administrative Reporting," be utilized for guidance with regard to any dispute as to an individual's membership in a named group.

The Conferees direct the Commission to report to the Congress annually on the effect of section 309(i)(3) and whether it serves the purposes stated. See generally Fullilove v. Klutznick, 448 U.S. 448, 510, 513 (1980). This report should include a statistical breakdown of the characteristics of applicants involved in lottery proceedings, those receiving preferences, and those actually awarded licenses.

The Conferees intend that both a media ownership preference and a minority ownership preference will be available to all eligible applicants. Thus, for example, an applicant, a majority of which is owned by minorities, and whose owners have no controlling ownership interests in the media of mass communications, would receive no less than a cumulative, 3:1 preference over an applicant without preferences. Moreover, an applicant, a majority of which is owned by minorities, but whose owners have controlling interest in four media of mass communications properties or a medium of mass communications serving the community of license of the grant sought, would still receive a minority ownership preference (though not being eligible for a media ownership preference).

With respect to both the media ownership and minority ownership preferences, the Conferees expect that the Commission shall evaluate ownership in terms of the beneficial owners of the corporation, or the partners in the case of a partnership. Similarly, trusts will be evaluated in terms of the identity of the beneficiary.

The Conferees expect that the preferences which will be awarded in the administration of a lottery will result in a real and substantial increase in the diversity of ownership in the media of mass communications and consequent diversification of media viewpoints. The Conferees note that this carefully designed preference scheme could be undermined by the rapid re-assignment or transfer of stations, construction permits, or licenses granted by a lottery. Thus, it is the firm intent of the Conferees that for any mass communications media service in which the Commission determines use of a lottery is appropriate, it should retain its present anti-trafficking rules (47 C.F.R. 73.3597 (1981)) or devise similar protections to help ensure that the very purposes sought to be achieved by the preference scheme be fulfilled. Moreover, the Com-

mission should require that the applicant that is actually awarded the license certifies that they have not entered into any agreement, explicit or implicit, to transfer to another party after a period of time any station construction permit or license awarded. If those eligible for preferences were simply applying for licenses for the purpose of obtaining a quick profit on the sale of the station once the license is awarded, the entire lottery preference mechanism would be undermined.

Administering the system of random selection.—The Commission's administration of the random selection system will differ depending on whether the licenses are to be granted for the media of mass communications or for non-media services. The lottery procedure for the latter is extremely simple, with each applicant for a given license receiving a selection probability of 1/x, where x equals the total number of applicants.

The random selection system for mass communications media licenses, on the other hand, must take into account preferences for ownership of few or no mass communications media entities, and preferences for minority ownership, along with the total number of applicants for a given license.

The Conferees intend that the media ownership preference be computed prior to the minority ownership preference. Those applicants with no controlling ownership in mass communications media should receive a fixed relative preference of 2:1; applicants with controlling interest in one, two, or three mass communications media entities should receive a fixed relative preference of 1.5:1. Applicants with controlling interest in more than three mass communications media entities or in at least one entity serving the city of license should receive no media ownership preference. Following the award of media ownership preferences (where applicable), each applicant's selection probability should be normalized (*i.e.,* adjusted to reflect its actual probability of being selected), taking into account the total number of applicants in the lottery.

The Conferees are concerned that their objective of increasing media diversity by granting preferences in the administration of a lottery system will be diluted in instances where the number of applicants for a given license is large. It is important to ensure that the media ownership preference will have an appreciable impact on the results of the selection process. The award of preferences, therefore, is not only intended to ensure that the lottery process is conducted in a way which guarantees the consideration of certain criteria which are of primary significance in the comparative hearing process, but it is also intended to create a process which is highly outcome-oriented in terms of furthering the actual granting of licenses to those applicants who would most further diversity objectives.

Thus, the Commission must ensure that the sum of the selection probabilities of all applicants deserving of a media ownership preference be no less than .40 for any given instance in which the lottery is being used, even if after the award of the media ownership preference the aggregated selection probabilities of all such applicants awarded this preference totals less than 40 percent. The Conferees intend that this be accomplished by adjusting the normalized selection probabilities of each applicant deserving of a media own-

ership preference, where necessary, to ensure that the sum of the selection probabilities for all such applicants be at least .40. Following this adjustment (where applicable), the selection probability of applicants not deserving of a media ownership preference should again be normalized.

After making all the necessary adjustments for ownership preferences (where applicable), each minority controlled applicant should receive a fixed relative preference of 2:1. This minority ownership preference should be awarded in addition to any media ownership preference to which a particular applicant may be entitled. Following the award of minority ownership preferences (where applicable), each applicant's selection probability should again be normalized to arrive at the final selection probability for that particular use of the lottery.

The following step-by-step procedure, to which the Conferees and the Commission have agreed following extensive staff discussions, establishes the process for the Commission to follow in the administration of a lottery to be used for granting licenses for any media of mass communications. This detailed procedure offers the Commission guidance to correct its previous failure to implement a lottery system.

A. Divide the total number of applicants into 100 to find the individual applicant selection probabilities without adjustment for preferences.

B. Identify all applicants by ownership group according to the following table:

Group and ownership of mass communications media, and preference factor

1—no controlling ownership interest	2.0
2—controlling interest in 1-3 entities	1.5
3—controlling interest in more than 3 entities or in at least 1 entity serving the city of license	1.0

C. Multiply the selection probabilities for each applicant from Step A by the appropriate preference factor from Step B.

D. Normalize all probabilities using the following formula: Intermediate probability for each applicant equals applicant's Step C probability divided by sum of all applicants' Step C probabilities.

E. Sum the probabilities from Step D by group. Then sum the probability totals from Groups 1 and 2. If this sum is greater than .40, skip Step F and go on to Step G. If this sum is less than .40, each applicant in Groups 1 and 2 will have its intermediate probability raised as follows:

(1) Compute the quotient of .4 divided by sum of the probability totals from Groups 1 and 2;

(2) the new intermediate probabilities are then computed as: intermediate probability for each applicant equals applicant's Step D probability times quotient from (1) above.

F. Normalize the probabilities not altered in Step E (i.e., Group 3—those with no media ownership preference) using the following formula: Intermediate probability for each Group 3 applicant equals .6 divided by number of Group 3 applicants.

G. Identify minority controlled applicants.

H. Multiply the intermediate probabilities of the minority controlled applicants by 2.0.

I. Normalize all probabilities using the following formula: Final probability of selecting any applicant equals intermediate probability of applicant divided by sum of all intermediate probabilities.

The following hypothetical situation illustrates this procedure. Assume that there are ten mutually exclusive applications for a given license for a medium of mass communications, with the following characteristics:

Applicant and minority status	*Media ownership*
1—nonminority	owns 1 other media property.
2—nonminority	owns 4 other media properties.
3—nonminority	owns 4 other media properties.
4—nonminority	owns 4 other media properties.
5—nonminority	owns 4 other media properties.
6—nonminority	owns 4 other media properties.
7—nonminority	owns 4 other media properties.
8—nonminority	owns 4 other media properties.
9—minority	owns no other media properties.
10—minority	owns 4 other media properties.

Step A: Total number of applicants equals 10. Individual applicant selection probabilities without preferences equals 10/100 equals .10

STEP B

Applicant	Number of media properties owned	Group
1	1	2
2 to 8	4	3
9	0	1
10	4	3

Step C.—Applicant and selection probability multiplied by preference factor

1	.1(1.5)=.15
2	.1(1.0)=.10
3	.1(1.0)=.10
4	.1(1.0)=.10
5	.1(1.0)=.10
6	.1(1.0)=.10
7	.1(1.0)=.10
8	.1(1.0)=.10
9	.1(2.0)=.20
10	.1(1.0)=.10
Total	1.15

Step D.—Applicant and step C probabilities divided by sum of all probabilities

1	.15/1.15=.1304
2 to 8	.10/1.15=.087
9	.20/1.15=.1739
10	.10/1.15=.087

Step E: Group 1 probabilities and Group 2 probabilities=.1739 +.1304=.3043.

Since .3043 < .40, each Group 1 and Group 2 applicant will have its intermediate probability adjusted as follows:

(1) .4 divided by the sum of the probability totals for Groups 1 and 2 equals .4 divided by 1739+.1304 equals .4 divided by .3043 equals 1.314.

(2) For Group 1: .1739(1.314) equals .2285. For Group 2: .1304(1.314) equals .1713.

Step F: Each Group 3 applicant's probability equals .6 divided by the number of Group 3 applicants equals .6 divided by 8 equals .075.

Step G: Only applicants 9 and 10 are minority controlled.

Step H.—Applicant and probability with minority ownership factor

1	.1713(1.0)=.1713
2	.075(1.0)=.075
3	.075(1.0)=.075
4	.075(1.0)=.075
5	.075(1.0)=.075
6	.075(1.0)=.075
7	.075(1.0)=.075
8	.075(1.0)=.075
9	.2285(2.0)=.457
10	.075(2.0)=.150
Total	1.3033

Step I.—Applicant and final probabilities

1	.1713/1.3033=.1314
2	.075/1.3033=.0575
3	.075/1.3033=.0575
4	.075/1.3033=.0575
5	.075/1.3033=.0575
6	.075/1.3033=.0575
7	.075/1.3033=.0575
8	.075/1.3033=.0575
9	.457/1.3033=.3506
10	.150/1.3033=.1151
Total	.9996

AGREEMENTS RELATING TO WITHDRAWAL OF CERTAIN APPLICATIONS

House bill

The House bill contained no provision.

Senate amendment

This provision amends Section 311(c) of the Act to impose identical standards and further the same goals in proceedings involving competing applications for new broadcast facilities as those used when applications are withdrawn during renewal proceedings.

Conference substitute

The conference substitute adopts the Senate provision.

Section 311(d) of the Act was amended by the Omnibus Budget Reconciliation Act of 1981 to provide that, in broadcast renewal proceedings involving mutually exclusive applications, the Commission shall approve any agreement between the applicants where one or more of the applicants agrees to withdraw its application in

return for valuable consideration. However, the Commission first must determine that the agreement is consistent with the public interest and that no party to the agreement filed its application for the purpose of entering such an agreement. Section 311(d) was intended to prevent the filing of frivolous applications calculated to harass an incumbent or coerce payment of expenses to the competing applicant. This provision imposes identical standards and furthers the same goals in proceedings involving competing applications for new broadcast facilities.

The Conferees recognize that in relative terms there are more Commission proceedings involving competing applicants for new facilities than there are proceedings involving license renewal applicants and competing applicants. Similarly, there are relatively more dismissal agreements between competing applicants for new facilities than there are between incumbent licensees and their competing applicants. These dismissal agreements generally serve the public interest because they often avoid lengthy hearing appeals, thus expediting the start of the new broadcast service involved in the proceeding. This public interest benefit would be substantially reduced, if not eliminated altogether, were the Commission required in every case to incur the costs and delays of determining whether the application to be dismissed was filed for the purpose of entering into a dismissal agreement.

It is not the intention of the Conferees that such proceedings be held in every case involving a dismissal agreement. Accordingly, in enacting regulations to implement this provision, the Conferees expect the Commission to create a procedure whereby this question can be resolved expeditiously. For example, Section 73.3525(a) of the Commission's rules, 47 C.F.R. 73.3525(a), currently requires each party to a dismissal agreement to submit an affidavit setting forth all relevant facts about the agreement (i.e., nature of consideration paid, history of negotiations, etc.). These parties also could be required to state the circumstances surrounding the filing of their respective applications. Further proceedings would be required only if, after reviewing these affidavits, there remained a question of whether the applications had been filed in good faith for the purpose of actually obtaining the license.

This provision also makes a clarifying change to Section 311(d) of the Act.

WILLFUL OR REPEATED VIOLATIONS

House bill

The House bill contained no provision.

Senate amendment

This provision defines the terms "willful" and "repeated" for purposes of Section 312, and for any other relevant section of the Act (e.g., Section 503).

Conference substitute

The conference substitute adopts the Senate provision.

Section 312 of the Communications Act of 1934 presently provides in part that the Commission may revoke any station license

or construction permit for willful or repeated failure to operate substantially as set forth in the license, for willful or repeated violation of any provision of the Communications Act of 1934, Commission rule, or treaty, and for willful or repeated failure to allow reasonable access to legally qualified candidates for Federal elective office. Section 503 provides in part that the Commission may impose forfeitures for willful or repeated failure to comply with license terms and conditions, or for willful or repeated failure to comply with the Act, any Commission rule, or treaty.

As defined in the Conference Substitute, "willful" means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. "Repeated" means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be "continuous" would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission's application of those terms in Midwest Radio-Television Inc., 45 F.C.C. 1137 (1963).

The Conferees intend that these new statutory definitions as applied to Section 312(a)(7) of the Act be read in conjunction with past Commission decisions and court precedent with respect to providing reasonable access to Federal candidates.

APPLICABILITY OF CONSTRUCTION PERMIT REQUIREMENTS TO CERTAIN STATIONS

House bill

The House bill contained no provision.

Senate amendment

This provision deletes obsolete language from Section 319(a) of the Communications Act of 1934.

Conference substitute

The conference substitute adopts the Senate provision.

AUTHORITY TO ELIMINATE CERTAIN CONSTRUCTION PERMITS

House bill

The House bill contained no provision.

Senate amendment

The Senate provided that construction permits shall not be required for public coast stations, privately owned fixed microwave stations, or stations licensed to common carriers, unless the Commission makes a public interest finding that such permits are necessary.

Conference substitute

The conference substitute adopts the Senate provision.

Currently, most prospective radio licensees must follow a two-step procedure to obtain operating authority—first applying for a construction permit and then for a station license. The Conferees believe this requirement in some cases may delay market entry

and place an unnecessary administrative and financial burden on both the potential licensee and on the Commission.

The present procedures for government stations, amateur stations, and mobile stations—for which construction permits are not required—remain unchanged by the Conference Substitute. Broadcasting stations must still comply with the existing two-step procedure. With respect to any other station or class of stations, the Commission shall not waive the construction permit requirement unless it determines that the public interest would be served by such a waiver.

PRIVATE LAND MOBILE SERVICES

House bill

The House bill contained no provision.

Senate amendment

The Senate clarified the treatment of land mobile services under the Communications Act of 1934.

Conference substitute

The conference substitute adopts the Senate provision.

This provision makes a number of additions and revisions to Sections 3 and 331 of the Communications Act of 1934, which will be discussed by subsections.

Subsection 331(a).—The Communications Act of 1934 contains no guidelines for the FCC to follow in managing the spectrum to be made available for the private land mobile services, other than its broad statutory authority to promote the "public interest, convenience, and necessity." The Conferees believe such guidelines are necessary since these services have a direct and substantial impact on the public welfare and the economy. Subsection 331(a) sets forth general principles that are to guide the Commission in taking actions to manage the spectrum made available for use by the private land mobile services, as defined in new subsection 3(gg) of the Communications Act. Private land mobile service includes those services described in new paragraph 331(c)(1).

In managing these services, the Commission should take actions which will promote safety, improve spectrum efficiency, reduce the users' regulatory burden, encourage competition, provide services to the largest number of users, or increase interservice sharing opportunities with these and other services. These guiding principles are not intended to be exclusive. The Commission may consider, consistent with the other provisions of the Act, any other relevant factors in the public interest. Moreover, not all of these guidelines need be considered in each individual case. All are important goals. The Commission may wish to focus its efforts on one or more in each instance, varying its emphasis with each particular case.

The Commission should be ever vigilant to promote the private land mobile spectrum needs of police departments and other public agencies which need to use such radio services to fulfill adequately their obligations to protect the American public. The Conferees are particularly concerned about radio services which are necessary for the safety of life and property and urges the Commission to care-

fully consider the legitimate needs of public safety agencies in managing the private land mobile spectrum.

The Conferees believe that implicit in the guidelines enumerated in subsection 331(a) is the principle that the Commission may not employ auctions in managing the spectrum made available for use by the private land mobile services. The Conferees are concerned that use of an auction—that is, selling frequency space to the highest bidder—or a similar method which turns upon a user's monetary ability to pay for a frequency allocation will work to the detriment of an efficient and competitive private land mobile spectrum. Thus, by providing the guidelines in this subsection, the Conferees intend to specifically prohibit the Commission from employing auctions or similar economic methods in managing the private land mobile spectrum. However, this prohibition should not be construed to limit the ability of the Commission to use lottery procedures for purposes of granting private land mobile licenses, or to impose reasonable fees upon a private land mobile licensee after the grant of the license.

Subsection 331(b).—The Conferees recognize the value of the assistance provided to the Commission by non-Federal Government advisory coordinating committees in the frequency assignment process for the private land mobile and fixed services. Subsection 331(b) specifically authorizes the Commission to utilize the services of such committees.

The number of licensees and users in the private land mobile and fixed services is already large. There are now approximately 850,000 stations in these services and there are almost 25,000 applications received each month for private land mobile and fixed station licenses. The number of licenses is expected to increase even more dramatically in the future. *See Future Private Land Mobile Requirements,* Notice of Inquiry, FCC 82-2, PR Docket No. 82-10, released January 26, 1982.

From the data on record with the FCC, the Conferees are convinced that the frequency coordinating committees not only provide for more efficient use of the congested land mobile spectrum, but also enable all users, large and small, to obtain the coordination necessary to place their stations on the air. Without such frequency coordinating committee activity, some of these applicants would not be able to afford the engineering required in the applications process. Thus, by essentially equalizing the frequency selection process for all applicants, the applicants are placed on a competitive parity, with no one applicant operating on a better or more commercially advantageous frequency than his or her competitor. The Conferees note that this pro-competitive aspect of frequency coordination is of particular importance to small business operators.

To further promote fairness in frequency allocation, the Conferees encourage the Commission to recognize those frequency coordinating committees for any given service which are most representative of the users of that service. The Conferees also encourage the Commission to develop rules or procedures for monitoring the performance of coordinating committees.

The Conferees note that the Commission presently accepts applications for private land mobile services licenses which are based on

appropriate field study coordination techniques. *See* 47 C.F.R. 90.175 (1981). In adopting these provisions authorizing the Commission's use of advisory coordinating committees for coordinating the assignment of frequencies to stations in private land mobile service and in the fixed services, the Conferees do not intend to mandate the elimination of frequency coordination by way of field study engineering reports. The FCC would thus have the discretion to conduct frequency coordination through use of a frequency coordinating committee or by accepting the submission of a field study report, as the Commission determines best serves the public interest.

The section also makes it clear that advisory committee personnel retain their private sector status. They are not to be considered employees of the United States Government and they are not covered by the provisions of either 5 U.S.C. 2101 et. seq. or 31 U.S.C. 665(b) (1976). Finally, this section makes it clear that any committee which assists the Commission in this regard is not subject to the provisions of the Federal Advisory Committee Act.

Subsections 331(c) and 3(gg).—The purpose of adding Subsections 3(gg) and 331(c) to the Communications Act of 1934, as amended, is threefold:

(1) to provide a definition of private land mobile service;

(2) to delineate the distinction between private and common carrier land mobile services; and,

(3) to specify the appropriate authorities empowered to regulate these same services.

The Communications Act of 1934, as amended, does not include a definition of the private land mobile services. New subsection 3(gg) adds this definition and thereby provide explicit Congressional support and guidance for existing and future FCC regulation of these services. The definition adopted herein encompasses the myriad of radio systems utilized by these governmental, commercial, industrial and transportation licensees which range from small relatively uncomplicated two-way dispatch systems, to complex ones involving multiple transmitters to cover wide areas. The private land mobile services currently consist of the following radio services: local government, police, fire, highway maintenance, forestry conservation, special emergency, power, petroleum, forest products, motion picture, relay press, special industrial, business, manufacturers, telephone maintenance, motor carrier, railroad, taxicab, automobile emergency, and radiolocation. The Conferees expect the Commission to add, modify, or delete private land mobile services as the need arises, consistent with the guidelines specified in subsection 331(a).

New Subsection 331(c) both establishes a clear demarcation between private and common carrier land mobile services and specifies that only the latter may be regulated on a common carriage basis. By contrast, no person, participating in the private land mobile services, whether as a licensee, equipment supplier or otherwise, shall be classified as a common carrier with respect to its participation in these services. The distinction between private and common carrier land mobile services is the subject of considerable litigation between private land mobile operators and radio common carriers before the FCC and the courts. The Conferees believe that

establishing this demarcation in the Communications Act of 1934 would serve the public interest by resolving much of this litigation.

The basic distinction set out in this legislation is a functional one, i.e., whether or not a particular entity is engaged functionally in the provision of telephone service or facilities of a common carrier as part of the entity's service offering.[1] If so, the entity is deemed to be a common carrier. If not, it clarifies that private systems may be interconnected with the public switched telephone network under the tests in subsections 331(c)(1) (A) and (B), and the entity providing the base station facility or service is nonetheless providing private land mobile service. With respect to the land mobile services, this test supersedes the traditional common law test of indifferent service to the public established in National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630 (1976), cert. denied, 425 U.S. 992 (1976).

To implement this distinction, subsection 331(c)(1) provides for the following: (a) classifies the various types of shared radio systems currently licensed in the private land mobile services (e.g., specialized mobile radio and multiple licensed systems) as "private" (i.e., non-common carrier) radio systems; (b) authorizes the entrepreneurs involved in such systems (i.e., licensees, equipment suppliers or any other third party) to offer their services or facilities to eligible users "indiscriminately" or otherwise, as their discretion and marketplace forces may dictate; and (c) prohibits such shared systems from being interconnected with common carrier facilities if the licensees or entrepreneurs are engaging in the resale of telephone service or facilities.

Section 331(c)(2) further specifies that radio dispatch systems are not authorized in the domestic public (common carrier) land mobile service with the exception of those stations authorized as of January 1, 1982.[2] In substance, the bill deregulates dispatch service, except for "grandfathered" common carrier stations, and requires that it be provided on an unregulated basis in the private land mobile services. The Conferees are informed that current use of common carrier stations to provide dispatch service is de minimis. Thus, while such stations licensed in the domestic public land mobile radio service (47 C.F.R. 22.500, et seq. (1981)) prior to January 1, 1982, may continue to add customers and locations, this limited exception should not impair the Conferees objective of assuring that frequencies allocated for use by radio common carriers are not devoted to dispatch service to any significant extent.

Nothing in Subsection 331(c), however, should be construed to bar persons who are otherwise licensed as common carriers from providing dispatch service in the private land mobile services; nor should it be construed to impair the ability of common carriers to compete for any class or type of customer for their services. Thus, for example, if a plumber or taxi company or a police department

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[1] See, e.g., Resale and Shared Use of Common Carrier Services, 60 F.C.C.2d 261 (1976), on recon. 62 F.C.C.2d 588 (1977), aff'd sub nom. American Tel. & Tel. Co. v. FCC, 572 F.2d 17 (2d Cir. (1978)), cert. denied, 439 U.S. 875 (1978).

[2] Common carriers are presently authorized to provide both "general" and "dispatch" two-way communication services. See 47 C.F.R. 22.501 (a), (b), (c); 22.911(d) (1981). Only "dispatch" service would not be permitted by the Conference Substitute; neither "general" service nor one-way paging service is affected.

has radio communication needs that can be satisfied through service provided by a cellular radio operator, this section interposes no objection. Moreover, Section 331(c) does not bar common carriers from providing interconnected services or facilities to users of licensees of stations licensed in the private land mobile services, via a base station or through interconnection on the user's premises. Only if a private land mobile operator or licensee is reselling for profit interconnected common carrier services is the interconnection prohibited. This will assure that frequencies allocated essentially for purposes of providing dispatch services are not significantly used to provide common carrier message service.

Subsection 331(c)(3) delineates the jurisdiction of state and local governments with respect to the land mobile services, consistent with the demarcation between private and common carrier service established by the bill. State and local authority is entirely preempted with respect to the activities of any person operating within the private land mobile services. Conversely, however, the states retain full jurisdiction to engage in the economic regulation of common carrier stations (*i.e.*, regulation of entry, rates and practices) consistent with Sections 2(b) and 221(b) of the Communications Act of 1934 (47 U.S.C. 2(b), 221(b) (1976)), to the extent they deem it necessary in the public interest to do so. Similarly, the Commission's exclusive radio licensing authority under Title III of the Communications Act is maintained. Nothing in this subsection shall be construed as prohibiting the Commission from forbearing from regulating common carrier land mobile services; however, the Commission may not use its licensing powers to circumvent limitations in its economic regulatory jurisdiction over common carrier stations.

Subsection 3(n).—Finally, the definition of mobile service presently contained in Section 3(n) of the Communications Act of 1934 (47 U.S.C. 153(n) (1976)) would be amended so as to include clearly one-way paging service as well as two-way radio communication services.

NOTICES OF APPEAL

House bill

The House bill contained no provision.

Senate amendment

The Senate shifted the burden from the Commission to the appellant or petitioner when a Commission action is appealed.

Conference substitute

The conference substitute adopts the Senate provision.

The Conferees believe that since the Commission is the appellee in proceedings filed with the U.S. Court of Appeals to review Commission actions, the party seeking review of a Commission decision is the party best able to carry out the relevant notice obligations, and thus should be required to notify all interested parties.

The Conferees intend that the term "interested parties" include only the formal participants in a Commission action, i.e., informal commentators in a rulemaking proceeding need not be individually

notified of an appeal of a final order in that proceeding. The Conferees direct the Commission to assist appellants and petitioners in compiling lists of formal participants in order to facilitate the notification process.

This section also removes the requirement that the Commission present the decision-making record to the court within 30 days after an appeal is filed, leaving such procedures to be controlled by the Federal Rules of Appellate Procedure, which provides that the record must be filed with the court within 40 days after the Commission is served with the notice of appeal. F.R.A.P. Rule 17, 28 U.S.C. (1976).

COMPUTATION OF CERTAIN FILING DEADLINES

House bill

The House bill contained no provision.

Senate amendment

The Senate amended Section 405 of the Communications Act by providing that specified pleading periods for seeking agency reconsideration or judicial review of Commission decisions commence from the date on which the Commission gives "public notice" of its decisions.

Conference substitute

The conference substitute adopts the Senate provision.

Recently, the Commission adopted rules which refine the meaning of "public notice." Addition of New Section 1.103 to the Commission's Rules, Amendments to Section 1.4(b), Report and Order, 85 F.C.C. 2d 618 (1981).

By adopting these rules, the Commission determined that public notice, as that term is used in Section 405, only can take the form of a written document. See Section 1.4(b) of the Commission's rules as amended, 47 C.F.R. 1.4(b) (1981). The kind of written document constituting public notice will be governed generally by the kind of proceeding that is involved. For example, in notice and comment rulemaking proceedings, public notice of a final Commission decision will occur on the date such decision is published in the Federal Register. See Section 1.4(b)(1) (1981). For most non rulemaking proceedings, public notice of a final Commission decision will occur when the full text of that decision is made available to the public at the Commission's headquarters. See Section 1.4(b)(2) (1981). See also, Section 1.4(b) (3) and (4) (1981) which describe the other two kinds of written public notice the Commission may give. The Conferees believe that in rulemaking proceedings it is important that the public have the opportunity to obtain a copy of the full text of the Commission decisions before pleading periods for appeal begin. See 47 C.F.R. 1.4(b)(1) (1981). The provision of the Conference Substitute is premised on the present FCC rules remaining in effect.

EFFECTIVE DATE OF CERTAIN COMMISSION ORDERS

House bill

The House bill contained no provision.

Senate amendment

The Senate amended Section 408 of the Communications Act of 1934 and clarifies the Commission's authority to specify the effective date of its decisions.

Conference substitute

The conference substitute adopts the Senate provision.

Absent this provision, the unamended language of Section 408 appears to provide that no orders of the Commission (other than orders involving the payment of money) could become effective until thirty days after such orders became final. However, the legislative history shows that Section 408 was not intended to totally restrict Commission flexibility with respect to such matters. The Conferees intend that Section 408, as amended by this provision, will make clear that Commission decisions shall become effective 30 days after public notice is given unless the Commission, in its discretion, specifies a different effective date. The Conferees also note that current Commission rules are consistent with this provision.

APPLICATION OF FORFEITURE REQUIREMENTS TO CABLE TELEVISION SYSTEM OPERATORS

House bill

The House bill contained no provision.

Senate amendment

The Senate amended Section 503(b)(5) of the Communications Act of 1934 to make clear that the Commission may impose forfeitures on cable system operators without first, among other steps, issuing a warning and providing the opportunity for comment. It is not clear under current law whether the Commission must comply with these and other procedures before taking forfeiture action against cable system operators.

Conference substitute

The conference substitute adopts the Senate provision.

This amendment to Section 503(b)(5) makes clear that, for purposes of the forfeiture provisions of the Act, cable system operators are to be treated in the same manner as licensees or other holders of Commission authorizations. This amendment ratifies current Commission practice.

FORFEITURE OF COMMUNICATIONS DEVICES

House bill

The House bill contained no provision.

Senate amendment

The Senate added a new Section 510 to the Act to permit courts to be directed to seize and retain illegal radio equipment or unlicensed equipment used in violation of the Act, thus preventing its continued operation.

Conference substitute

The conference substitute adopts the Senate provision.

Section 302 of the Communications Act of 1934 empowers the Commission to prohibit the manufacture, import, sale, shipment or use of radio equipment that may cause severe interference problems. Additionally, Section 301 requires the Commission to license radio stations in the United States. In carrying out these statutory responsibilities, the Commission has repeatedly encountered situations where, notwithstanding the conviction or judgment against an individual for violating one of these sections, the court has returned the illegal equipment to the defendant.

The conference substitute provision remedies this problem. This new authority will apply only in cases where warrants are properly obtained and served by law enforcement officers and upon a judgment rendered in United States District Court. The Conferees intend this provision to apply only to those violations that involve willful and knowing intent or gross negligence.

EXEMPTION APPLICABLE TO AMATEUR RADIO COMMUNICATIONS

House bill

The House bill contained no provision.

Senate amendment

The Senate permitted self-enforcement of non-compliance of Commission policies by amateur radio operators.

Conference substitute

The conference substitute adopts the Senate provision.

The amateur radio service has long enjoyed the reputation of being largely self-regulating. The amateurs have kept their bands in order with minimal enforcement activity by the Commission. It is critical that amateurs be allowed to continue this self-enforcement because the number of amateurs is increasing at a steady rate, and because the Federal Communications Commission's Field Operations Bureau is unable to monitor amateur radio to any great extent due to its limited resources. From time to time enforcement problems do arise, to which amateurs must and do respond with efforts to bring any noncompliant action into full compliance with amateur rules. For example, one amateur operator might inform another that he was engaging in prohibited transmission of commercial traffic or use of indecent language which should be discontinued. This has worked in an overwhelming number of cases.

There are very few cases involving continued noncompliant behavior, and those have in the past been handled by amateur operators. However, even here amateurs can be helpful through proficient use of direction-finding techniques. Utilizing these techniques and taping on-air conversations on unlicensed or licensed persons on amateur bands, amateurs have saved countless hours of FCC Field Operations staff time in identifying the source of illegal transmissions on the amateur bands.

Questions have arisen from time to time concerning the applicability of Section 605 of the Communications Act to amateur radio.

Section 605, which is intended to protect the privacy of persons engaged in wire or radio communications, expressly exempts certain communications, as follows: "This section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication which is broadcast or transmitted by amateurs or others for the use of the general public, or which relates to ships in distress."

Amateurs in the past have been considered exempt from the privacy provisions of Section 605 by virtue of the language cited. However, recent interpretations have held that amateur transmissions, other than general calls for a contact from any other station, are subject to the secrecy provisions of Section 605. *Reston v. F.C.C.*, 492 F. Supp. 697 (D.D.C. 1980). The U.S. District Court for the District of Columbia in *Reston* painstakingly reviewed the legislative history of Section 605 in the hope of ascertaining Congressional intent with regard to amateur transmissions as referenced in the last sentence of that section. The Court, frustrated at the lack of clear expression of legislative intent regarding the matter, held that amateur radio transmissions are not exempt from Section 605 unless they are transmissions "for the use of the general public."

The problem with this interpretation is that it precludes amateur radio operators from disclosing the contents of transmissions heard on the amateur bands, even illegal transmissions. Thus, amateurs are prohibited from working together to locate and monitor illegal transmissions and unlicensed operators. Nor can amateurs be of as much assistance to Commission enforcement personnel, because amateurs cannot disclose to Commission personnel the content of transmissions received. This has already had an adverse effect on amateur self-policing efforts.

All amateur and CB radio operators may use any of the channels allocated to their services. Thus, these operators do not enjoy any reasonable expectation of privacy, a right which Section 605 is intended to protect. Therefore, this section of the Conference Substitute expressly exempts the amateur and CB radio services from the prohibitions in Section 605. The Conferees believe that self-enforcement efforts on both the amateur and CB radio services should be encouraged, and that this provision will promote such self-regulation without unduly infringing upon individuals' privacy rights.

TECHNICAL AMENDMENTS

House bill

The House bill contained no provision.

Senate amendment

The Senate made certain technical modifications to the Communications Act of 1934, including Section 405 and its heading, where the term "reconsideration" is substituted for the term "rehearing."

Conference substitute

The conference substitute adopts the Senate provision.

The term "reconsideration" has come to be used customarily in Commission practice and is used in the Commission's rules. The

modification of terms will not change the operation of this section 405.

AMENDMENTS TO OTHER LAW

House bill

The House bill contained no provision.

Senate amendment

The Senate provided that offenses against Commission officers or employees assigned to perform investigative, inspection or law enforcement functions will be punished in the same manner and to the same degree as are offenses against the federal employees now specified in this section.

Conference substitute

The conference substitute adopts the Senate provision.

Section 1114 of Title 18 of the U.S. Code imposes specific sanctions against individuals who interfere with or harm certain federal employees who may be assaulted, intimidated or interfered with in the performance of their duties. Commission employees are not now specifically entitled to the protection offered under this statute.

TITLE II

NTIA AUTHORIZATION

House bill

The House bill contained no provision.

Senate amendment

The Senate authorized appropriations for NTIA at $12.4 million for FY 1983.

Conference substitute

The Conference Substitute adopts the Senate provisions with the following change. The Conferees agreed that NTIA would be authorized for two years at $12.9 million for FY 1983 and $11.8 million for FY 1984. The amounts authorized are below that currently authorized for NTIA. The reduction is based on a change in the functions of the agency; NTIA's level of involvement in Federal regulatory proceedings will be substantially lower than that in prior years.

The Conferees do not expect NTIA to eliminate the Public Telecommunications Facilities Program (PTFP), and expect that the authorization of $15 million in fiscal year 1983 for the PTFP as contained in Public Law 97-35, will be appropriated by Congress.

The PTFP has brought public broadcasting service to states like Arizona, South Dakota, New Mexico, Nevada, and Colorado, where no service would otherwise exist. The Committee expects this program to continue since many areas of the country are yet to be served. An adequate level of funding has to exist to accomplish this end.

There are a number of functions currently performed by NTIA which are either inappropriate for that particular agency, or expendable in light of constraints upon federal funds. In particular, both the Telecommunications Protection program and the Federal Facilities Review program are eliminated under the Administration's request. The Conferees do not object to the elimination of these programs. However, the Conferees are disturbed that the Biomedical Feedback Group, which is concerned with non-ionizing radiation, is being eliminated under the Administration's request. The Conferees agree that this type of biological research should not fall within the purview of NTIA, which has no authority to issue a standard on non-ionizing radiation. However, the Conferees believe that research should continue, under the auspices of a more appropriate agency, such as the National Institute of Health or the Environmental Protection Agency. The Conferees are aware of the budgetary constraints upon each of these agencies, but encourage NTIA to make available its research and experience so that the effects of non-ionizing radiation are better understood.

STUDY OF LONG-TERM TELECOMMUNICATIONS GOALS

House bill

The House bill contained no provision.

Senate amendment

The Senate required that NTIA conduct a study of the long term telecommunications and information goals of the United States, and the policies which are necessary to achieve them.

Conference substitute

The conference substitute adopts the Senate provisions with certain changes. The Conferees accepted the Senate provision regarding a study on the telecommunications and information goals of the United States, but included stipulations which serve to focus the study on international telecommunications and information policies. The Conference Agreement also contains a restriction on the release of information which could harm U.S. commercial interests in international trade.

The Conferees agreed that ascertaining the goals and objectives of its international telecommunications and information policies by the United States is of great importance. The Conferees also agreed that the U.S. government should be organized in such a way so as to maximize the ability of the United States to realize its goals in international negotiations.

The Conferees expect NTIA to play a significant role in the formulation of international telecommunications policy by the Executive Branch. The United States faces a rising challenge to its technological telecommunications leadership from foreign firms, many of them directly or indirectly supported by their governments. In the area of information services, there has been an increase in barriers to U.S. service offerings, limits on transmission facilities, problems of entry into foreign markets and restrictions on the flow of information across national boundaries.

The U.S. government must establish a long range strategy that will promote and protect U.S. interests. NTIA must exercise leadership in the development of that strategy.

The Conferees were concerned that, in the course of conducting the study, data might be released which could enable foreign PTT administrations to harm U.S. commercial interests in international trade. This concern is grounded in the increasing potential for restrictions on the transmission of data across national boundaries; and in various restrictions to telecommunications facilities under discussion in other countries.

In the event that usage or traffic data is released to the public, it would then be possible for these PTT administrations to target restrictions on those industries or sectors which are most vulnerable. The Conferees admonish the Administration to respect the need to avoid giving foreign PTT administrations any information which could be used against American companies doing business abroad. Such information must be kept confidential.

JOHN D. DINGELL,
TIMOTHY E. WIRTH,
JAMES T. BROYHILL,
Managers on the Part of the House.

BARRY GOLDWATER,
TED STEVENS,
HOWARD W. CANNON,
Managers on the Part of the Senate.

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